In the Supreme Court of the United States.

OCTOBER TERM, 1915.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* Walter S. Kennedy, plaintiff in error,

v.

FREDERICK W. BECKER, AS SHERIFF OF Erie County, N. Y., defendant in error.

No. 666.

SUPPLEMENTAL BRIEF FOR THE UNITED STATES.

Since the Government filed its original brief in this case it has discovered in the possession of the New York Historical Society the original contemporaneous notes made by Thomas Morris, detailing the negotiation of the treaty of Big Tree. It has also discovered in the possession of the Connecticut Historical Society, at Hartford, Conn., the original contemporaneous notes of Jeremiah Wadsworth, commissioner of the United States, at the negotiation of this treaty. These Morris and Wadsworth notes, and the report made by them of the speeches, are reproduced in full and verbatim as Appendices A and B of this supplemental brief.

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These original contemporaneous notes show with great clearness the importance which both Morris and the Indians attached to the reservation of the hunting and fishing rights to the Indians. The notes also make it perfectly evident that the Indians were, throughout, looking to the United States Government to secure them in the protection of their rights, and that the instrument which resulted from the negotiations was, in fact, a treaty, and not a mere deed.

The following is a synopsis of some portions of the notes which the Government considers should be called to the special attention of this Court; and the Court is also asked to consider especially those parts of the Appendices A and B in italics.

SIGNIFICANT EXTRACTS FROM THE MORRIS AND WADSWORTH PAPERS.

The Morris papers show that the Indians were assembled as early as August 22, 1797. On that day Mr. Thomas Morris arrived. On August 23 he called the Indians together and made a short address of welcome. Various preliminary meetings were had during the next few days, and the real business of the treaty opened on August 28. Commissioner Wadsworth then delivered a speech, in which he said (p. 36):

> Brothers of the Seneca Nation
>
> I am the commissioner of the United States appointed by the President for the purpose of

holding a treaty with you. In his name I bid you welcome.

Brothers

For the safety and welfare of all the Indian nations in friendship with the United States Congress have passed a law regulating our intercourse with you among other things it is enacted "that no purchase, &c., see the 12" section of the law.

On the same day a letter or speech in writing by Robert Morris was read in which he appointed his son to represent him (p. 39):

Brothers. I have now opened my mind to you, and as I depend on my son and my friend to carry on and conclude the business with you I shall only add that the President of the United States approving of this Treaty and being your Father and friend he has appointed an honorable and worthy gentleman formerly a member of Congress the Honorable Jeremiah Wadsworth, Esq., to be a Commissioner on behalf of the United States to attend and superintend at this treaty, and the Governor of the State of Massachusetts also appointed an honorable and worthy gentleman formerly a General in the American Army and now a member of Congress The Honorable William Shephard Esq. to be a Commissioner to attend this treaty on behalf of the State of Massachusetts. These gentlemen will attend to what is said and done on both sides, in order to see that mutual fair dealings and justice shall take place, their office and duty will be rendered agreeable so far as depends on me because I desire nothing but fair open and honest transactions.

On August 30 Thomas Morris, as agent for his father, delivered an address in which he made the following significant remarks (p. 41):

> Brothers, the white people do not want your lands for the purpose of hunting but for that of cultivation—the Great Spirit has implanted in you a desire to pursue the beasts of the forest and in us to cultivate the soil. This cultivation, Brothers, does neither diminish nor destroy the game. Your hunting grounds will be of as much advantage to you in the hands of the white people as in your own, for you can reserve to yourselves the full and ample right of hunting on them forever. . . .
>
> By selling your lands therefore Brothers and reserving to yourselves the perpetual right of hunting on them you retain every solid advantage which they can afford you and you yield only in exchange for the comforts of life that which at present produces you nothing. Brothers—the chain of friendship is at present perfectly bright between the white people and you, that chain which unites us together ought to induce us mutually to accommodate each others wants. Your white brethren are willing to provide you with the things which they enjoy provided you furnish them with the room which they want and of which you have too much. . . .
>
> You will also remember that notwithstanding I offer you more money than you get for all the game you kill, *your young warriors will retain the full privilege of hunting and fishing forever to them, neither will you forget that their game is not destroyed nor diminished by the white people.*

In Wadsworth's notes he states as follows:

> Mr. Morris made them proposals to sell their land * * * stating to them that they would still have as much game on the ceded land as they now had, and as an evidence of this he called their attention to the tract on which we are, purchased by Mr. Phelps, settled by white people, yet yielding to the Indian huntsman more game than the tract asked for.

A disagreement arose in the early days of September as to the sum to be paid, and one of the chiefs, Red Jacket, opposed the sale.

Whereupon, on September 3, Thomas Morris again made a speech in the course of which he said (p. 15):

> Brothers, I will now offer you 100,000, which is more than you ever have been or ever will be again offered. I propose to you to make reservations round your town and retain the right to hunt and fish on the lands sold.

On September 4 Col. Wadsworth, the United States commissioner (p. 16)

> expressed his sorrow that a division in their councils had taken place . . . He was sent there by the President of the United States, to see that justice was done them . . . He did not ask them to sell their lands, he should not ask them to sell, he did not want them to sell, but he hoped they would unite in their council and do that which would be for the interest of

> their nation. . . He hoped they would soon make up their minds on this business and let him go home, he was old and had the gout, he had not long to live and wished to spend the remainder of his days with his family and friends.

On September 6, after an angry speech (p. 20),

> Red Jacket rose and in great passion said again let us cover the fire, and furiously stretched his hand across the table, let us shake hands and part friends, and then the business was considered as finally closed.

This disposition of affairs was not wholly satisfactory to the warriors of the tribe, and on September 7 at a council called by them, two sachems, Little Billy and Farmer's Brother, stated that the council fire had been again kindled because (pp. 20, 21)—

> it is an ancient custom that when a difference arises among us that it should be referred to the warriors as being the greatest number, we the sachem have therefore referred this business to the warriors and head women.

Thereupon (p. 22)—

> The business was closed for the day by a few observations from Little Billy to the Nation, recommending that the warriors would whilst this business was under consideration abstain from drinking and attend only to the interest of the nation.

During the few days Thomas Morris busied himself with persuading the Chief Women to his plan (pp. 22, 23).

On September 9 Chief Cornplanter made a speech which should be read in full (pp. 47) as showing the dependence of the Indians upon the Government of the United States to protect them.

To this Col Wadsworth, the commissioner, answered (p. 26):

> In your address I find these words "One thing we are sorry to find that the President has consented to the sale of all our lands at this Council fire—if he had left the matter entirely to ourselves it would have been more satisfactory as we wish to act as we please in the business"—He has left it entirely to yourselves I have never asked you to sell them nor will he ever ask you to sell them, they are yours—the Treaty with the U. S. laid on your table the other day by Red Jacket secures them to you—it would be cruel to take these lands from you—they have no right to them. I now beg you to remember what I have said to you that we may no longer be groping in the dark—I again repeat the lands are yours.

Finally, after many days' debate, an agreement was reached September 16, and the deed was signed (p. 12 *et seq.*).

> Previous to signing the deed it was distinctly read and its import clearly explained to the Indians after which Col. Wadsworth asked them whether they understood it perfectly, if not it should be explained to them again—they replied it was unncessary as they understood it well and was in every respect agreeable, on which he asked them to sign.

At the conclusion of the whole negotiation Commissioner Wadsworth made a speech to the Indians, in which he described the whole bargain as follows:

> The tenor of the sale obliges Mr. Morris to pay one hundred thousand dollars to the President in Bank Stock of the U. S. It will produce every year a sum without lessening the principal stock. The President, Congress nor no man could take them, and as long as the U. S. exists the money is secure to you. *Hunting and fishing is secured to you on the tract* just sold to them in the deed you have given.

and it is stated that Wadsworth

> concluded with wishing them happiness and *a fulfilment of his promises*, gave the head sachems warriors his hand, and parted.

CONCLUSION.

The United States asks this Court to preserve the hunting and fishing rights which the Seneca Indians reserved to themselves and which reservation the United States by treaty agreed to protect. The game laws of the State of New York are incompatible with the Federal agreement of protection contained in the treaty.

A recent unreported decision by Judge Hazel in the United States District Court for the Western District of New York (referred to at the argument of this case) is printed as Appendix C of this brief.

CHARLES WARREN,
Assistant Attorney General.

APRIL, 1916.

APPENDIX A.

THOMAS MORRIS PAPERS.[1]

On the 22d August Mr. M. went to the Genisee River. He found that the Indians were all collected and had been waiting two days for him. on the 23d he called them together & addressed them bidding them welcome to the place where he had kindled the Council fire, apologizing for the delay occasioned by the Commissioners not arriving which he imputed to the badness of the weather, & warning them against the attempts of some white men whom he said he supposed were present while he spoke and who only attended the treaty for the purpose of leading astray & deceiving the Indians, that such conduct in those people was in contempt of the laws of their country & that if they did not desist that he would see those laws put into execution.

immediately after his sitting down the Cornplanter rose recapitulated the heads of his speech to the Indians & expressed his satisfaction at being informed that mischief makers would be prosecuted.

[1] Passages to which the Government calls especial attention are italicized in this Brief but are not so underlined in the original manuscript.

Big Tree

Saturday 26 Aug. 1797.

Arrived here this day late in the afternoon and found the Indians receiving their annual presents from the United States under the direction of Mr Chapin.

Sunday 27″.

This day the Indians held a council for condolence with Mr. Chapin on the death of his Daughter to which they invited the Commissioners and all the Gentlemen from a distance.

Monday 28″

Met the Indians in Council at one o'clock. Corn Planter rose and addressing himself to Mr. M — acknowledged the receipt of his speech of invitation by Jones and Parish—that they on their part had punctually attended and was sorry the Gentlemen who came to meet them in council had met with delays on the road that the string of wampum he then handed him was the same delivered him by the interpreter.

Col. Wadsworth then delivered the speech No. 1. (Appended to this brief report.) (p. 36.)

Gen. Sheppard then rose and made them the speech No. 2 (p. 38).

Mr. Morris in a short address informed them that as the Great Spirit had prevented the attendance of his father at this treaty he had appointed him and C. Williamson Esq. agents to treat with them on his

behalf as would appear by the power he then handed to them and had directed the delivery of the following speech which he had written to them from Philad. See No. 3 (p. 39).

The speeches of the Commissioners which were in writing and a string of wampum were then laid on the table and Mr. Morris informed them that they had nothing farther to say to them for the present, and covered the Council for that day.

29″.

This day the Indians were counciling amongst themselves on the speeches delivered to them until late in the afternoon when we were summoned to their public council at which Red Jacket noticed the speeches delivered yesterday thanked the Great Spirit for his care of the Comm'rs and confessed themselves satisfied with the appointment made by the President Governor of Massachusetts and their friend who called for this council fire, but turning to Mr. T. M.—observed that from the speeches delivered to them by him it appeared something was kept back and from the candor and sincerity promised by him they hoped all would be laid before them fairly—

On which he rose & informed them that it was his intention to act with sincerity & fairness towards them, and was then ready to lay before them more particularly the business for w'h they were assembled if they were then disposed to hear him.

Red Jacket then observed that as the sun was nearly down it would perhaps be well to leave it until tomorrow to which he consented and the council was covered over.

Conformably to the promise of yesterday Mr. Morris went to the Council House this morning and made to the Seneca Nation the following address.

[No. 4. See p. 41.]

And then sat down and after a few minutes silence one of the chiefs rose and informed that if he had nothing further to say to them for the present they would wish to be left to their private consultations on w'h he rose and informed them he had said all that was necessary for him to say at this time, and accordingly covered over the Council fire.

31st.

This day the Indians were councilling on the above speech but came to no conclusion—

Sept. 1.

Early this morning Farmers Brother a very sober and respectable chief called on Mr. M. with information that a Person in the neighborhood of the camp had last night been selling whiskey to the Indians many of whom were drunk and amongst the number Red Jacket and wished to know what was to be done in this affair as the man was still selling out whiskey after some consultation he was encouraged to go and

seize the barrel of whiskey and knock the head in which he immediately executed. This greatly irritated Red Jacket and many of the Indians who from ntoxication fell to fighting in groups, pulling Hair biting like dogs wherever they could get hold. of course no business was done.

Mr. M. and Capt. Chapin both of whom went & forbid all the people residing near the Indians selling Whiskey.

2d.

In the afternoon of this day the sachems sent for the Comm'r Mr. M to their council fire.

The Farmers Brother rose and addressed the Nation mentioning their intention to ans. Mr. M's speech. That they had been told a great deal of money would be offered them for their land, they could not learn how much and Mr. M. had not yet told them—they supposed he would now bring forward a great deal of money to show them but requested he would hold his fists close as they would rather have their lands than money.

In the evening a private conference was had with the principal sachems at which Mr. M. offered 100,000 Drs. for the whole of their lands which might be invested in Bank Stock of the U. S. and would bring them at least 6000 Drs. annually forever. This offer they requested he would state in public council. On this the conference concluded.

Sept. 3d.

This day Red Jacket sent a private message to Mr. M. stating that the speech he delivered yesterday was not his own sentiments, but made to please some of their People—the next speech would not be quite so harsh and that he would finally ans'r his purpose if he persevered in the business.

In the afternoon a public council was called at which Red Jacket rose and said Brothers we yesterday made you a speech and you immediately ans'd it—we told you then and we tell you now that our seat is not too large for us to sit down upon comfortably—once the 6 Nations were a great People and had a large council fire which was held at Onondaga but now at Buffaloe and soon may be obliged to move again. Now the Onondagas are nobody—have no lands of their own, but we ever hospitable to our Brethren let them sit down on our Lands—We are still a great people and much respected by all the western Indians which is all owing to Lands of our own—You wish to buy all our lands except such reservations as you might make for us to raise corn on, it will make us nobody to accept such reservation and where you may think proper. If this should be the case we could not say we were a free People—Brothers we mentioned before that our fore Fathers had sold their lands & had eat up all the money they got for them. Brothers we wish to reason on this business cooly and calmly—it is of great magnitude and we thank you for putting us in mind of this and hope

you will stick to the same advice you give us. Brothers we wish you to put your speech in writing so that we can read them when we are old, there is a great many of our People that can not remember long, but if they are wrote down they can be read to them when they are old and we shall know what has been said to us.

After this he sat down and Mr. M. rose and addressed them nearly as follows

Brothers agreeable to your request I shall hereafter hand you my speech in writing and will attend you for that purpose as early tomorrow morning as you please. Brothers you asked yesterday to know what price I would give you for your lands, I will tell you now, but first I have something to say to you which I wish you to give serious attention to so that you may understand well and impress on your minds what I have to say. Brothers if you do not sell your lands at this treaty you will never have another opportunity of making a bargain in the presence of the whole Nation because my father will never either in person or by agents again meet. *Brothers I will now offer you 100,000 which is more than you ever have been or ever will be again offered. I propose to you to make reservations round your town and retain the right to hunt and fish on the lands sold, but your reservations must not be large.* This sum is greater than was ever offered to you for lands. I would advise you to invest this money in Bank Stock of the United States where it will be safe and forever bring you an annual income of at least 600. Drs.

which will be sufficient to cloath you every year, which game taken on your lands will not do if sold, *but if you sell you will not only have all the game you now have but a very hansome sum of money annually.*

This speech seemed to be extremely well received and closed the business of the day.

This afternoon in Council Mr. M. delivered the speech in writing delivered yesterday.

The Cornplanter then rose and in a short address to the Indians informed them that the sachems had taken the whole business on themselves and had shut the warriors out and they had never made him an answer to a speech made by him to them as a Chief Warrior at Buffaloe Creek. He hoped they would not trifle away time and finally give their friend Mr. Morris no more satisfaction than they had given him—as for himself he should start Home tomorrow and whatever was done be it on themselves He was extremely glad the President had sent on a Person to see that business was fairly transacted, and concluded by thanking him for his care and friendship of them.

Col. Wadsworth, the Comm'r of the U. S. expressed his sorrow that a division in their councils had taken place. It was no uncommon thing among the white People and from that source arose all their difficulties, but when national matters was before them and the interest of the nation concerned they ought to unite their endeavors to effect that which would be for the Public Good. *He was sent there by the President of the U. States to see that Justice was done them—*

that he did not want any of their lands himself he had enough and wanted for nothing. He did not ask them to sell their lands, he should not ask them to sell, he did not want them to sell, but he hoped they would unite in their councils and do that which would be for the interest of their nation with some other general observations relative to a speedy conclusion of the Business.

After he had sat down the Farmers Brother rose and expressed himself nearly to this effect. That it was the first he had heard of a division in their Councils, and that if it was so it ought not to have been mentioned here the White People ought not to have known it—the business should have been settled among ourselves. Capt. Abeel it is true mentioned to us at Buffaloe Creek he was for selling some land along Lake Ontario, and swapping some for lands adjoining his town in Pennsylvania, but we could not give him an ans'r until we knew what Mr. Morris would ask or what lands he wanted of us—We proceed in this business according to the custom of our fore Fathers—The sachems first Council among themselves and then call on the warriors which was the plan now pursuing and then sat down.

Col. Wadsworth again rose and repeated his recommendation of unanimity—that many words would only widen the breach and make it more difficult of cure—that great and brave men always in cases of this kind forgave each other and like good friends sat down and councilled together for the general good and he hoped they would now do so—He

repeated that he did not come here to buy their lands but to be their friend—The President knew he was rich and wanted for nothing and was the reason he was sent here. He hoped they would soon make up their minds on this business and let him go home, he was old and had the Gout, he had not long to live and wished to spend the remainder of his days with his family and friends. After this the Council fire was closed.

5th.

No council this day. The Indians appear to be taken up with troublesome men who are inimical to the business and to establish an influence ply them well with whiskey which renders them unfit for serious business.

6th.

This day the chief warrior Little Beard addressed their people and observing that it was always a custom among their forefathers that all business relative the Nation except war should be referred to the sachems—therefore the belt delivered me by the Corn Planter I shall return him again and let the whole business be transacted by the sachems, and whatever they determine on all the warriors will agree to. After which he sat down.

Red Jacket rose and addressing himself to the Comm'rs and Mr. M. and Capt. Williamson, observed that with respect to our Nation not being of consequence amongst the Western Indians from the lands we possess as stated by Mr. Morris in a former speech

on this subject the true reason if they were not respected was they were too much in company with U. S. Commissioners; but as this subject had nothing to do with their present business it should be buried that the Business might go on. Brothers now I wish your attention to what I shall say. We have made up our minds to answer your proposal to buy our land. We are all agreed to try the alue of our lands. We will let you have a tract of 6 miles square beginning at the corner of Gorham and Phelps purchase and the Pennsylvania line at one dollar p acre. This is our price. You need not offer us half that price nor expect more land and our friend Col. Wadsworth will see that this bargain is just and will confirm it that the writings may be drawn. Brother Mr. Morris you know the value of land round a Town that you settle and hope you will deal honorably with us—you will get 6 dolls p. acre and we offer to sell at one, therefore you ought to make your mind easy Tomorrow would be time enough to give an answer or he might give it now as his friend Capt. Williamson was present with him and could consult him and perhaps give his ans'r immediatey, that he had spoken his mind in a few words—very short.

Mr. Morris then rose that he should speak his mind as short. He had stated to them at different councils the true state of this business and believed it was understood by them—that the offer now made did not require any consideration, it could not be accepted and that if as had been said it was their fixed determination and nothing further was to be expected they

might as well cover the council fire, but if you are again desirous of considering the proposals I have made I shall wait your ans.

And the moment he had sat down Red Jacket rose and in great passion said again let us cover over the fire, and furiously stretched his hand across the table, let us shake hands and part friends, and then the business was considered as finally closed.

7th.

This afternoon the warriors sent over for the Comsioners Mr. Morris and Capt. Williamson to a council called by them at which they attended and Cornplanter rose and addressing himself to the warriors informed them that the business of this meeting was to smooth the business of yesterday and that their minds would be expressed by his cousin.

Little Billy then rose and said Brothers you will consider this council fire as kindled by the warriors and we thank the Great Spirit for his care of us the past night and that he has again permitted us to meet side by side. Brothers the reason that we have kindled this fire is that our voices as warriors should be heard by you—yesterday you heard what our sachem said to you, he spoke very short as from the whole nation and on their part the business was closed. Brothers you must expect our ears was open as well as yours—the speech he delivered we heard as well as you and which you answered rather too hastily. We are sorry for that speech and for the conduct of one of our warriors—it was improper. We wish to

unite once more as friends. If we can not do business let us at least part friends. If we leave it on the present footing it would give us great uneasiness and to many not here. Brothers let us suppose you have a valuable property that another wished to purchase, should, you not treat calmly with each other—why get displeased if you could not agree. It will answer no good end, let us therefore treat friendly with each other on this business which was their wish.

Mr Morris in answer said that he thanked the warriors for their friendly interference to remove the misunderstanding that had taken place. Business of importance he agreed with them should not be conducted with heated minds and was willing to acknowledge that too much warmth of expression was used by both parties yesterday—with him it was desirable that all misunderstandings should be buried in oblivion and cheerfully united with them in again opening a friendly fire and hoped it would burn bright as ever. That if it was their intention to renew the business that had been before the sachems he would meet them with calmness.

Farmers Brother then rose and asked the attention of all present. We are assembled here in great numbers of different nations and now called the Six Nations all of us listened to what passed yesterday with grief and we thank the warriors for taking an early moment to ease the minds of the nation—the Commissioners Mr. Morris and Capt. Williamson. It is an ancient custom that when a difference arises among us that it should be referred to the warriors as

being the greatest number we the sachems have therefore referred this business to the warriors and head women and hope they will give an answer that will be satisfactory to all parties—repeated his thanks that the business was brought on a friendly footing again and the dispute was buried. The warriors and head women would he said answer the propositions that had been made to them.

Col. Wadsworth then rose and expressed his satisfaction and congratulation that the warriors had taken the business into consideration and he hoped they would study and act for the true interest of their nation and that they might soon be able to make up their minds that he might return to his home.

Gen'l Shepherd addressed them to the same effect and the business closed for the day by a few observations from Little Billy to the Nation recommending that the warriors would whilst this business was under consideration abstain from drinking and attend only to the interest of the nation.

In the morning Mr. M. desired the interpreters to bring all the Chief Women to Mr. M. after they were assembled. He told them that the business upon which he had convened the nation was then at an end., that their sachems had hastily covered the council fire and that he expected soon to go home. That as the business had been transacted only with the sachems that perhaps the women were ignorant of what offers he had made, that as those offers were particularly calculated to alienate the distresses of

the women and children of their nation they ought not to be concealed from them that therefore he would repeat them which he did. He then told them that he had brought up from Philadelphia some presents intended for them, that as they were not accessory to the ill treatment he had met with from the chiefs he would at all events give them these things that he had contemplated and still would in case of success give them a number of cows but that if he failed in the purchase the expense he already had been at was so great as to prevent his fulfilling the latter intention. He begged them to contrast their present situation with the one in which they would be placed if furnished with money enough to provide the comforts of life. He finished by delivering his string of wampum and told them that whenever hereafter they experienced the hardships of poverty to show it to their chiefs and tell them that with that Belt they had been afforded wealth which the chiefs rejected—this had an excellent effect the women at once declared themselves for selling and the business began to wear a better aspect.

* meet you on this business.

* he then told them as they were but little habituated to the use of money he did not suppose that they could form a just idea of the greatness of the sum offered that there were but very few white men who had ever seen so much together, that it was ten times more than was to be found in all Gorham & Phelps purchase that altho' they appeared to be rich to them that all of them together could not raise

one tenth of that money, that altho' he himself had been in the habit of seeing a great eal money that he never had seen a sum together amounting to any thing like $10000, that wishing to give them as accurate an idea as he could of the quantity he had estimated its weight to be such as if it was brought from Albany by horses it would take at least 35 to bring it. that six large Bbls. would hardly hold it all &c. he then advised &c.

7th.

After the proceedings of this afternoon the business was considered as ended. Mr. M. however was asked by the Farmers Br. whether he was a going home early in the morning he said that he should prefer to go. but that he had so many things there that it would take him two or three days to pack them up. he also said that as he was obliged on this acc't. to stay that notwithstanding the business was ended yet that he did not want to leave his brothers out of temper. he told them that he had kindled the council fire and therefore that it was his and not Red Jackets business to put it out. that as things were so situated they might again meet for the purpose of being reconciled to each other & parting friends.

The morning after Young King arrived his friend and cousin died. on acc't of this misfortune he refused attending to business until the day after his burial. The business was then explained to him he expressed his dissatisfaction at all that had taken place he said that he had long ago determined never

to sell that the Nation might do as it thought fit but that his voice was against it. this created much confusion. the most zealous of the chiefs talked then of going home said that if the successor of Old Smoke opposed the sale it ought not to be made. it took two or three days to persuade his Majesty who eventually yielded.

8th.

No public council was called by the warriors this day but we observed that they were councilling in small parties both men and women, and as the business seemed to be progressing to something definite it was desirable that they should be undisturbed by Persons we were told had heretofore procrastinated the business by a liberal use of whiskey and insinuating that it was intended to cheat them. a writ was therefore issued for apprehend'g Alex'r Ewing who was accordingly taken into custody but not being able to procure bail was conducted to Canandaigua Prison which gave extreme alarm to inter meddlers.

9th.

In council this day Little Billy informed us that previous to entering on business a few words was to be addressed to the Seneca Nation by one of their Cayouga brothers, which was as follows

Brothers of the Seneca Nation

We observe with pain that in the business before you there is some difference between you—be united as one in this business between you and the White

people. It is of the highest importance to you your women and children therefore be united and consider well what you are going to do—We your Brothers of the Tuscaroras, Cayougas and Oneidas have no interest in the bargain you are about to make but desire your happiness and therefore recommend to you and to your women who attend well to this important business.

Little Billy then rose and made the following address.

Brothers Mr. Morris and Capt. Williamson

We sincerely hope you will make your mind easy on this business before us—it has long been under consideration, an answer was given by our sachems which not being agreeable, the business was referred to us the warriors—yesterday we were councilling on it but the day being very uncomfortable and rainy nothing was concluded on but today we are united as one and as you requested we now deliver our mind in writing and request the person who wrote it for us will read it publicly as there is no secret in it and was as follows.—

See Cornplanters address 9″ Sept. No. 5. (p. 47)

Col. Wadsworth then addressed the Seneca Nation as follows

Brothers

On any other occasion than the present I should deliberate before I answered your speech but in the present case as I find you in error which is the more surprising as I delivered you my sentiments in writing, it is my duty to put you right. *In your address I find*

these words "One thing we are sorry to find that the President has consented to the sale of all our lands at this council fire—if he had left the matter entirely to ourselves it would have been more satisfactory as we wish to act as we please in the business"—He has left it entirely to yourselves I have never asked you to sell them nor will he ever ask you to sell them, they are yours—the treaty with the U. S. laid on your table the other day by Red Jacket secures them to you—it would be cruel to take these lands from you—they have no right to them. I now beg you to remember what I have said to you that we may no longer be groping in the dark—I again repeat the lands are yours.—There are several allusions in your speech to other things—all that we can do is to see that in the present business no injustice is done you We have nothing to do with any business past—we are only sent here on this business—one word more and I have done. You charge your sachems and Mr. Morris with being proud, perhaps we do not perfectly understand your meaning but if these gent'n (Mr. Morris and Capt. Williamson) are proud I will answer for their laying it aside. I will only repeat to you to attend to your interests I despair of asking you to let me go home I must patiently wait your time.

Mr. Morris

Brothers

The Commissioner of the U. S. has answered that part of your speech relative to the President. It will therefore be unnecessary for me to say anything on that point Brothers the other day you told me the

business was referred to you and your women, I thought it wise and prudent in your sachems so to do being the most numerous part of the Nation But Brothers as the business was referred to you and as you have been councilling among yourselves I expected now a more explicit answer. I was in hopes to be informed by you and your women whether you intended to sell the whole lands or if not the whole what part, but if you have not had time to consult on the several points referred to you, you can yet have it and make your answer when you please. You advise me Brothers to consult the Book of the Great Spirit to see whether there is anything therein which authorizes the cheating or intruding on Indians. Without turning to that Book I will tell you there is not but I can with a clear conscience lay my hand on that book and say that I consider the offer I now make you for your lands to be strictly honorable, generous and calculated for your real benefit.

Brothers I beg you will consider what I have said to you before on this business in the speeches and propositions delivered all which I expect the sachems referred to you.

Corn Planter.

Brothers We now understand you perfectly well, the business is referred to the warriors and women. The Commissioner tells us we are mistaken in our idea of the President. We heartily thank him for removing the mistake from our minds. With regard to the business before us, we shall take it again into consideration and give an answer soon as pos-

sible. We beg our brother Mr. Morris will lend us the large map of our country which shall be carefully returned.

10th.

Gen. Shepperd informed the Indians at the opening of the council fire this day that Col. Wadsworth was rather unwell and could not attend but that it was his wish business should go on as he should see all that was done.

Little Billy then rose and addressing himself to the Nation informed them that they were now prepared to answer Mr. M.'s proposition and would be made known by Cornplanter.

Cornplanter—

Brothers The purpose for which this council fire was lighted up we have had long under our consideration and you may now expect our answer to your propositions. The time being appointed for this meeting the Government of the U. S. appointed a Commn'r to superintend the business who informed us that it was old Mr. Morris who desired this council Fire and that he only had the right to purchase our land. And as we are now assembled on this business we consider it as if referred to us at the seat of Government. Brothers The business now about to take place we consider as satisfactory to the Great Spirit as we shall make reserves and not sell the whole of the land he gave us. Brothers we recollect that your proposal was to buy all our lands, except reserves to be agreed on, for which you would give us a sum that would be useful to

our childrens children. The sum offered we consider as small but as we are to make such reserves as will suit our purpose we request you to make your minds easy on that business—the reserves we think of making you may consider too large, but the mode in which this country will be settled will give you great advantage and therefore it would be but generous to add to the annuity our seats we wish to be so large as that we can give our Indian brothers room in case they are hereafter crowded by white People—now Brothers after these reserves are made we are prepared to close the bargain and these reserves we wish it well understood are to be our own forever.

Mr. Morris—

Brothers I have listened attentively to the speech on behalf of the warriors and women which I consider as the voice of the whole Seneca Nation. I am happy to find by it that you have determined on a sale of your land because if this Treaty had failed it would have been impossible for my Father to have collected the chiefs and warriors again on this business and therefore you never would have had another opportunity of making a sale in the presence of the whole nation It would have been necessary hereafter for some of your sachems to have gone to Phila. which would not have been as satisfactory as a negotiation as open and fair as this at which every man woman or child capable of thinking can know what is passing It is on this acc't that I am pleased as all of you will return home satisfied and every

member of your nation will have acceded to this bargain.

Brothers, as you have not described your reservations you can not expect my consent until informed of their extent. I am not unreasonable nor do I wish to be tight but as the sum I offer is very large the reservation ought to be small, That the business of reserves may be well understood I would wish you to appoint chiefs to describe the reservations necessary for each tribe.

Little Billy then addressed the Nation—mentioning that by the speech they had just heard they would see the necessity of appointing suitable persons to make reserves and therefore proposed each village should immediately make the appointment that they might be ready to meet on this business tomorrow—for the present we will close the council fire.

11th.

No council this day but had several conferences relative to reservations. In the course of the day the Young King who is successor of Old Smook arrived attended by a young war chief who desired to be informed of all that had passed that he might be prepared to meet in council and therefore I reread to him this journal and all the speeches with which he expressed himself satisfied.

12th.

13″ 14″ 15″ & 16″ These four days were devoted to the business of making reservations in which there

was much difficulty to bring them within reasonable bounds as some tribes were extremely extravagant— The Buffaloes in particular wanted about 980,000 acres and the Catarawgas about 650,000 the Genissee Indians two miles along the river so as to take the flats & (?) mile square at Canauagas and 6 at Big Tree

6 at Beards Town
50 by 6 at Carrieadere } But on the 16″ all was concluded and in the evening the deed was signed.

At these private councils about reservations only Mr. M. and Mr. Elliott were present. The Indians were very tenacious. The only way of settling was to council with each party separately. The Buffaloes were the most difficult to bring over. Red Jacket insisted upon a reservation which would have taken in 900,000 acres for the Buffaloes only. He contended with extreme violence that their national pride and character would be lost unless they retained that. He urged with great animation a settlement on these terms.

Mr. M. on the other insisted upon the unreasonableness of their demand that he had offered them what the whole of their country was worth that he generously gave them what land they might in reason wish to retain but that they abusing of his goodness after being paid for them under the name of Reservations wanted to take half back.

Red Jacket persisted and Mr. M. told him that he would not acquiesce that his father would suppose him unfaithful in his duty. and upbraid him with folly &c.—after several days conference on this

subject Mr. M. offered for the Buffaloes and Tanawantas 100 square miles they rejected it and finally told him that they would reserve what they had mentioned that they were the sellers they were not to be told what they would part with but that they would sell only what they pleased.

Mr. M. then said that he was the payer and that he would only pay what he pleased. They asked him how much he proposed deducting from the 100000 as they would not lessen this reservation. He told them 25000 they consented to this and begged that the writing would be redrawn.

After his leaving them it appears that many of the chiefs present restrained by the forward loquacity of Red Jacket in Mr. M's presence, insisted upon the pay't of the whole 100000 & the curtailing of their reservation, in consequence of a conversation among themselves the Farmers Brother and the Young King came to Mr. M. and Mr. W. took them aside mentioned many inconveniences which would attend a deduction from the 100000 and also the retaining so long a reservation and finally asked for 200 square miles These gentlemen retired and after some hesitation agreed to it.

Red Jacket then rose and after recapitulating Mr. Morris's speech of the day before observed in answer to it that many disadvantages would attend a sale of their lands, that experience had proved that whenever they parted with their territory they also parted with the consequence. In order to elucidate

this he instanced the situation of the Oneidas formerly he said that they were a great people and formed a powerful part of the Six Nations, that they were useful to them in their councils, that they had remained connected with them until the State of New York had purchased from them their land. That since that period their importance had diminished and that although they were more wealthy than before yet that their national weight was lessened as it caused them to disunite from the remainder of the Six Nations. That all other nations that had sold had become quite contemptible, that the Senecas had not more land than they wanted a great deal of what they formerly owned had been sold and that the money received for it had been spent and that they were no richer than if none had been sold that they had been told &c &c.

Mr. M. immediately rose and began his reply by pointing out the benefit which would accrue to them by selling in the manner in which he proposed. He adverted to the arguments which he had made use of in his speech of the 30th and impressed upon them the advantages of their receiving an annuity. He told them that if their forefathers had disposed of the purchase money which they at various times received for their lands the way he proposed that the complaints of fraud and of their nations being now no richer than before those sales would not have been made. He then expressed his astonishment at having them impute

the separation between the Oneidas and them to the purchases from N. Y. he asked them whether the impression made on them by the last war was so slight as to be suddenly forgotten. It was that event he said that disunited your councils, many years before any purchase by N. York you had taken up the tomahawk against each other you never met but in the field of battle. But as the Oneidas had been mentioned he contended that they were happier since than before their sales, their reservations were more than sufficient for them, and their annuities made them easy and wealthy. As to other Indians surrounded by the whites he admitted most of them to be poor and unhappy but ascribed it not to their selling their land but to their improvidence in spending their money. This he contended was a strong reason why the present rulers of this nation should avail themselves of the present opportunity of securing the happiness of future generations.

After an address from Red Jacket to the Indians recapitulating this speech to them Mr. M. at their request covered the council fire.

Previous to signing the deed it was distinctly read and its import clearly explained to the Indians after which Col. Wadsworth asked them whether they understood it perfectly, if not it should be explained to them again— they replied it was unnecessary as they understood it well and was in every respect agreeable, on which he asked them to sign.

Red Jacket then rose and handed forward E. Allens daughter Polly and desired to be informed of the situation of the land the Nation had given to Allen and his children, Mr. M. told them that his father had bo't and paid Allen for it and that now he was paying the nation for it also—he was here interrupted by the young woman in this manner—No, Mr. M. it was only the improvements he sold—to this he replied his Papers would prove the contrary—she then turned to Col. Wadsworth and said I forbid the Commis'r from buying any of the land given to me by the Ind'ns. He told her she had bad advisers. He had nothing to do with this business but that for her satisfaction he would examine into her claim and give any certificate thereof that was proper if she would call on him in the morning. He then gave notice he would take his leave of them early in the morning as he was anxious to get home.

COMMISSIONER WADSWORTH'S SPEECH NO. 1.

Brothers of the Seneca Nation

I am the Commissioner of the United States appointed by the President for the purpose of holding a treaty with you. In his name I bid you welcome.

Brothers

For the safety and welfare of all the Indian nations in friendship with the United States, Congress have passed a law regulating our intercourse with you among

other things it is enacted "that no purchase, &c see the 12" section of law—

Brothers I recite this 12" section of the act at large that you may be on your guard and not listen to any proposals that may be made you by men who mistaking their own interests and regardless of yours may mislead you without any possible advantage to them but may expose them to the penalties of the law which will be fully inflicted if incurred.

Brothers This Treaty is held agreeably to the law I have mentioned on the Petition of Robt Morris Esq. its object is to effect a purchase if agreeable to you of a parcel of your land.

Brothers This is Gen. Shepperd who is appointed by the Governor of the State of Massachusetts to superintend any purchase that may be made of you by Mr. Morris at this Treaty and to approve thereof.

Brothers Mr. Morris and Capt. Williamson the son and friend of Mr. Morris you all know they are Mr. Morris's representatives and have full power to act for him in treating with you for the purchase of the lands in question, I have entire confidence in their candor and fairness but it is my duty to regard with attention all their negotiations with you and to see that they are so conducted as to preclude all reasonable ground of complaint on your part hereafter.

Brothers I rejoice with you that the Great Spirit has brought us together—let us so conduct as not to offend him least he withdraw his protection from us

JEREMIAH WADSWORTH
Commissioner for the
United States.

GENERAL SHEPHERD'S SPEECH NO. 2.

Brothers Your brother the Governor and the executive council of the State of Massachusetts desires that justice should be done to people of every colour and particularly to their Brothers of the Seneca Nation have sent me with power to superintend this treaty in their behalf. Brothers it is their wish that you should be happy, and if my presence can be useful to you it will amply compensate for the fatigue and trouble of my journey to this place.

Brothers previous to my leaving home it was ascertained by the public documents of the State of Massachusetts the originals of which are deposited among the records of that state, that Mr. R. Morris has a right to bargain with you for your lands and that he alone has on this subject Brothers I can speak with Confidence because his right was acquired from the State by which I am sent here.

Brothers Mr. Morris has appointed his son and his friend Capt. Williamson to attend to his business with you. Brothers I have perfect confidence in the integrity of both these Gentlemen but I shall nevertheless make it my business to see that the negotiations between you is carried on upon principles of justice and fairness.

Brothers I am an old man and much accustomed to do public business for the state to which I belong. I have always observed when thus employed that a spirit of harmony and conciliation was attended with happyness among us therefore Brothers I recommend

it to you I hope that all your minds will be united and that the voice of one will express the sentiments of you all.

Brothers I have now said all that I have to say to you at present. May the Great Spirit take you under his protection and give wisdom and unanimity to your Councils.

ROBERT MORRIS'S SPEECH.

Brothers of the Senaca Nation

It was my wish and my intention to have come into your country and to have met you at this Treaty but the Great Spirit has ordained otherwise and I can not go. I grow old am corpulent and not very well, and am fearful of traveling so far during the hot weather in the month of August.

Brothers. As I can not be with you at the Treaty I have deputied and appointed my son Thomas Morris Esq. and my friend Charles Williamson Esq. to appear for me and on my behalf to speak to and treat with you in the same manner and to the same effect as I might or could do were I present at this treaty with you, and it is my request that you will listen to them with the same attention that you would to me.

Brothers. I have the greatest love and esteem for my son and my Friend they possess my entire confidence and whatever they engage for on my behalf you may depend that I will perform the same as exactly as if I was there. and made the engagements with you

myself, therefore I pray you to listen to them and believe in what they say.

Brothers. It is now six years since I have been invested with the exclusive right to acquire your land, during the whole of this time you have quietly possessed them without being importuned by me to sell them, but I now think that it is time for them to be productive to you, it is with a view to render them so that I have acquiesced in your desire to meet you at the Genesee River. I shall take care immediately to deposit in the bank of the United States whatever my son and my Friend may agree to pay to you in my behalf.

Brothers. From the personal acquaintance which I have with your chiefs and head men I am assured that their wisdom and integrity will direct the object of the treaty to the happiness of yourselves and your posterity. It is a pleasing circumstance to me that my business is to be transacted with such men because while on the one hand they will take care of your interests, on the other whatever is done between them and me will be strong and binding. I hope that wise men will always be at the head of your councils, but for fear that those who succeed your present leading men should not deserve and possess your confidence as fully as these do, you had better have your business so fixed now as not to leave it in the power of wrong headed men in future to waste the property given to you by the Great Spirit for the use of yourselves and your posterity.

Brothers. I have now opened my mind to you, and as I depend on my son and my friend to carry on and conclude the business with you I shall only add that the President of the United States approving of this Treaty and being your Father and friend he has appointed an honorable and worthy Gentleman formerly a member of Congress The Honorable Jeremiah Wadsworth Esq. to be a Commissioner on behalf of the United States to attend and superintend at this treaty, and the Governor of the State of Massachusetts also appointed an honorable and worthy Gentleman formerly a General in the American army and now a member of Congress The Honorable William Shephard Esq. to be a Commissioner to attend this treaty on behalf of the State of Massachusetts. These gentlemen will attend to what is said and done on both sides, in order to see that mutual fair dealings and justice shall take place, their office and duty will be rendered agreeable so far as depends on me because I desire nothing but fair open and honest transactions.

Brothers I bid you farewell—May the Great Spirit ever befriend and protect you.

ROBT. MORRIS.

PHILAD'A *Aug. 1st, 1797.*

No. 4. THOMAS MORRIS' SPEECH.

Brothers of the Seneca Nation.

I now come forward to open my mind fully to you relative to the business which has occasioned this

council fire. You Brothers are in possession of a large tract of land which has been valuable to you only for the game which it contained. That game Brothers is fast diminishing and must soon cease to afford the same quantity of skins and food that you hitherto have derived from it, it therefore becomes necessary that you should provide yourselves with some more permanent mode of acquiring your subsistance and cloathing. There is Brothers but one method of accomplishing this object so desirable to you, that of parting with your lands for an adequate compensation. Brothers do not suffer yourselves to be agitated by this proposal. In pointing out to you the advantages of relinquishing your lands we do not mean that you should all rise from your seats and abandon your villages but that you should relinquish that part which is totally unproductive to you, reserving to yourselves in and about your different settlements full as much as is necessary for your actual occupation. Brothers, when the White people are about taking a step as important to them as the present one is to you, they always compare with each other the advantages and disadvantages of the bargain they are to make. Adopting therefore this rule which is founded in reason let us examine the advantages which you derive from the lands which you own. The part of them from which your women raise your corn is small altho in reality it is the only part of it which is productive to you. From the remainder you get nothing, it cannot

feed you when you are hungry, nor cloath you when you are naked, and when the little game life is gone you will be destitute of everything you stand in need of. Brothers if you were proprietors of all the land on this continent, you still under these circumstances would be poor. Your old men, your women and your children would feel all the hardships of want, they would have nothing to protect them from the winter frost nor the calls of hunger. What then Brothers you may ask will be the advantages of your selling—I will tell you Brothers—You will receive a larger sum of money than has ever yet been paid to you for your lands. This money can be so disposed of that not only you but your children and your children's children can derive from it a lasting benefit—it can be placed in the Bank of the United States from whence a sufficient income can annually be drawn by the President your Father to make you and your posterity happy forever. Then the wants of your old and poor can be supplied and in times of scarcity the women and children of your nation can be fed and you will no longer experience the miseries resulting from nakedness and want. *Brothers the white people do not want your lands for the purpose of hunting but for that of cultivation—the Great Spirit has implanted in you a desire to pursue the beasts of the forest and in us to cultivate the soil. This cultivation, Brothers, does neither diminish nor destroy the game. Your hunting grounds will be of as much advantage to you in the hands of the white people as in*

your own, for you can reserve to yourselves the full and ample right of hunting on them forever. Brothers, that the game is not destroyed by the white people you well know. You kill more game upon the land upon which you are now counciling than upon that which I now propose purchasing. What great advantage then do you derive from the land over yonder (pointing to the west side of the Genesee River) which is yours above that which is furnished by the tract which you have sold. The principal part of your subsistance is derived from this tract, and from the other you have only the satisfaction of knowing that you own it. *By selling your lands therefore Brothers and reserving to yourselves the perpetual right of hunting on them you retain every solid advantage which they can afford you and you yield only in exchange for the comforts of life that which at present produces you nothing. Brothers—the chain of friendship is perfectly bright between the white people and you, that chain which unites us together ought to induce us mutually to accommodate each others wants. Your white bretheren are willing to provide you with the things which they enjoy provided you furnish them with the room which they want and of which you have too much.* Brothers you may perhaps suppose that by selling your lands that you will do an injury to your posterity—this Brothers is not the case, by disposing of the money which you will receive for them in the manner which I have mentioned your children will always hereafter be as rich as you

are now—Brothers, there are other reasons why you should part with your lands—your sachems and chiefs are men on whose wisdom you can rely and you are sure that they will do you justice—doubtless men when they are dead and gone may succeed them and the property given to you by the Great Spirit may be parted with without the true interest of your nation's being consulted. Brothers you must be persuaded yourselves that if you do not sell that your children in future will. Why then should you forego your share of the satisfaction which the ease and prosperity of your women and the growing generation will afford you. Are they not as dear to you as the women and children of a future generation. Brothers by the plan which I have proposed you can make yourselves and your families happy and at the same time take sufficient care of those who are to follow you your posterity forever money enough to satisfy your wants and make you rich and happy as a nation. I have also showed to you that your game is fast diminishing, that it will eventually cease to yield to you the skins & food with which you heretofore have been supplied with, that the ease and happiness of your women & children, that the relief due to your old & poor, call upon you most powerfully to comply with my proposal. *You will also remember that notwithstanding I offer you more money than you get for all the game you kill, your young warriors will retain the full privilege of hunting & fishing forever to them, neither*

will you forget that their game is not destroyed nor diminished by the white people. You will also bear in mind that you now have a better opportunity of doing your duty to your nation than ever your children will have, that there is a larger sum of money offered to you than ever before has been given to Indians for their lands, that if under all the circumstances so favorable to yourselves you are unwilling to make the best provision for your nation that can be offered to it, that the whole blame of neglecting this opportunity will light upon your shoulders only. You will remember hereafter that I now tell you that neither my father nor any person in his behalf will ever again come forward and treat with you on the generous terms now proposed; that the probability is that he never again will have the same sum of money ready for you; that if he should ever be induced again to listen at all to a request from your nation to purchase, he would not think of offering to you a second time a sum near as great as the one which I have made mention of. If therefore your children should part with your lands hereafter for as small a consideration as they have received from Mr. Phelps for the tract which we are upon, they will have no reason to complain of the deception of the white people but the whole of the blame will be laid upon you.

No. 5. CORNPLANTER'S SPEECH.

Corn Planter to his Brothers the Commissioners, Mr. Morris, and other gentlemen attending.

We have kindled this council fire at the request of Mr. Morris. We have heard what has taken place in your conversation with our sachems day after day. Our sachems covered the council fire but Mr. Morris told us it was not entirely covered, that he meant to lay the business before the warriors & head women, and now as the business is referred to the warriors and women I will now remind you of a few promises made us by the U. S. at the close of the war. Their Commissioners told us at that time they had got strong & that if we would listen to the voice of peace they would take us under their protection—further they told us that if we would comply with this request that they would make our seats firm and permanent to us even if they were surrounded by white people; individuals should be undisturbed. They also told us at that time & ever since that if we would only exert ourselves to make peace with the hostile Indians toward the setting of the sun that they would always keep us in remembrance. As for my part, since the conclusion of the war I have always exerted myself to preserve peace & have always told my people that we would look up to Geo. Washington as our Father as he was the Governor of the 13 fires. We have always accepted his advice & I am happy to find that you have grown a great people and are now 15 fires. The U. S. has always told us that the little land marked out to us will be very valuable to us and to our chil-

dren's children if we would listen to the voice of peace. Now we warriors are going to see what this value is by the council fire now lighted up here. One thing we are sorry to find that the President has consented to the sale of all our lands at this council fire. If he had left the matter to ourselves it would have been more satisfactory, as we wish to act as we please in the business. Under this situation we hope that the President, Capt'n Chapin, & all the gent'n interested will take pitty on us, as there are many of our brethren of other nations residing by our consent on these lands & that in every town there is the bones of our ancestors which makes us very stingy of our lands, but if you all will consent to leave the matter entirely to us, we will then conclude a bargain with Mr. Morris. We warriors are very much dissatisfied with the pride and ambition of our sachems. It appears to us that Mr. M. in consequence, is also getting proud & obstinate; but now as the business is referred to the warriors and women we hope he will lay all obstinacy & pride aside. Now we wish Mr. Morris will only consent to leave the matter entirely to us, to point out the advantages of this bargain. We hope Mr. M. will take this matter into his serious consideration & consult the Book of the Great Spirit & that if he can find anything therein that directs the imposing on Indians then we will submit to it. In examining this Book if he should find anything directing white people to intrude on Indians we wish he would tell us of it.

BIG TREE, *Sept. 9, 1797.*

THOMAS MORRIS' SPEECH.

Brothers of the Seneca Nation.

We have listened attentively to your speech and we request the same attention from you while I am delivering our answer to it.

You say Brothers that when you become surrounded by the white people that altho your wealth will increase your importance will diminish, and to prove this assertion you desire me to look at the situation of those Indians who have sold their lands and who live on reservations surrounded by the white people. You also say that you are now respected by the western Indians, that they look up to you as their elder brothers and that you have attained this consequence by the land which you own. You further mention that you have not only your own importance as a people to preserve, but that other nations seated on your lands look up to you as their elder brothers for protection, that these are dependent on you and that it would be unjust in you to disturb them. You desire us to look back, and discover if we can near the Canandaga any vestige of the place where your great council fire was formerly held. You say that you are afraid that that council fire will be also extinguished at Buffalo Creek if you sell your lands. You also say that altho by the sale of your lands you will become possessed of a great deal of money, yet that you understand but little about the value of money, and your speaker declares that if he had this house full of it that his arm would never be tired in

handing to store keepers for the fine things which they expose for sale in their stores. You also remind us that we have called upon you to deliberate coolly and dispassionately upon the proposals which we have made to you.

Brothers we are happy to find that you have attended to our advice and that you are convinced of the propriety of our doing our business in a calm and temperate manner. We recommended it to you because we thought it would be of service, and we sincerely rejoice that you agree with us in sentiment in this particular.

Brothers, we were astonished to hear you speak of your apprehensions of being surrounded by the white people, and of the disadvantages which you would experience when so situated. You are already surrounded by the white people. There is not a single direction by which you can leave your country without coming to our settlements, and if you have been until now without experiencing inconveniences from being so situated, you will have none to expect hereafter. As to the Indians who have sold their lands and now reside among the white people, some of them to be sure are poor and miserable, others are better off than they would be if they still retained their lands. But what has occasioned the poverty and misery of those whose situations you lament? It has not been occasioned by their selling their lands but by their spending all the money which they got for them. If when they sold they had done

what we now wish you to do, if they had reserved to themselves an annual payment forever, they would still have maintained their consequence and their wealth.

Brothers we were also surprised at your mentioning the importance which your lands give you among your younger brothers the western Indians. Let us look back together and recollect what happened only a few years ago. Motives of friendship both for the United States and for them induced you to accompany our Commissioner into the country of your western brothers. Did they then listen to the wholesome advice which you gave them? No they shut their ears against your admonitions, and your situation among them became dangerous. I mention this to show to you that your lands do not give to you that consequence among your western brethren that you may imagine.

Brothers, the protection which you have given to other nations by seating them upon your lands will not be withdrawn if you sell. We agree with you that it would be improper to remove them and we shall be ready to confirm to them the privilege which they have heretofore had of living on and cultivating the ground which they occupy. You certainly have no reason to fear that your council fire at Buffalo Creek will be extinguished by a sale of your lands. Your principal reservation will undoubtedly be at Buffalo Creek and your council fire will burn there as well after the sale of the lands adjoining that

place as before. Union and harmony will be promoted by your drawing near to each other and your business will be better conducted and your councils attended by all of you with more ease than when you were scattered all over your country. Your former council fire was not destroyed by any sale of your lands, but by that unfortunate misunderstanding between us which gives us all pain to think of and which you properly observed the other day ought always to be kept out of sight. Neither, Brothers, can the situation of our friend Capt. Chapin be affected by your determination at present. If you are assembled in a few places he will meet you with less trouble than he heretofore has had in counselling with you, and his advice will be as important to you as ever it has been. Besides Brothers he is so disinterested a friend of yours that even if his office was affected by it, which it will not be, I am persuaded that he would wish you to attend to the good of your nation.

Brothers, you suppose that money is not as valuable to you as to the white people because you do not use it with the same economy. Why do you not? Because you never yet have received annually a sum adequate to your wants. When heretofore you have sold land your necessities have been so many that your money has been instantly swallowed up by them. You have received so little of it at a time that after spending it all you were yet unfurnished with many things useful to yourselves and families. But if you were enabled every year

by the receipt of a sum of money to provide yourselves with cloathing and other necessaries you would soon become as well acquainted with the use and value of money as the white people are. You would find so many advantages arising from a proper economy that you would soon become more anxious to save your money and my friend himself would after a little while be quite as unwilling to throw it away upon the fine things of a store as at present he would be to dispose of his land for the same purpose.

Brothers, I think it necessary to repeat to you again the proposals which I have made to you. I have offered you one hundred thousand dollars for all your lands excepting such reservations as it may be necessary for you to make. If these reservations are small I shall make no deduction from the sum just mentioned. If on the contrary you make them large the quantity of money which you receive will lessen in proportion to the land reserved. The sum of money which I have offered to you is very considerable, Brothers. That you ought to have the best security that our country can afford, I therefore proposed that it should be vested in the Bank of the United States in the name of the President your father. Being thus invested it will not only be always safe but it will annually furnish you and your children after you with money enough to make you rich and happy as a nation.

Brothers, the diminution of your game annually decreasing the wants of your old and poor people the

ease and happiness of your women and children and the many conforts with which this money will furnish your nation forever are strong reasons why you should accept of my offer.

Brothers, you will never again has as good an opportunity of doing complete justice to your nation. My father alone can buy your lands, and if after making you the greatest offer that ever yet has been made to Indians for lands you reject it he will never again treat with you on the same favorable terms. If he should ever be induced to meet you after this for a similar purpose he will not be able to come forward as full handed as he at present is. He can not keep so much money long together, he will apply it to other uses and you must expect if you sell in future to get no more than you have got for the land upon which we now are.

Brothers, I have now opened my mind to you fully. I have nothing more to say. I have made you all the offers that I can make, and I expect that your next answer will explicitly mention whether you will sell or not and if you do sell what reservation you will make.

1. They are afraid that when confined to reservations surrounded by the white people that altho their wealth will increase that their consequence will diminish. Instance the Indians who have sold & made small reservations.

2. That they are respectable as a nation & not only so but have under their care other nations. That

other nations now among them will increase their responsibility by coming among them. Look up to them in need. * * * look back.

3. Their council fire formerly at old Canandaga. That the Saskaskans now kindle the council fire at Buffalo Creek, and if their land is sold that also will be extinguished.

4. That the sale of their lands would bring them a great deal of money but that even if it did as they were not in the habit of making the same prudent use of money that the white people do it will be of but small use to them.

That the western Indians now look upon them as elder brothers. That they would lose respectability among them.

Take it coolly.

Food—fond of it.

Rough draft of original Indian Treaty with Seneca Nation for purchase of land. 1797.

JEREMIAH WADSWORTH PAPERS. 1791

Arrived at Canawagus. The Indians are assembled at Big Tree. Saturday August 26

at 9 oClock A M arrived at Big Tree the Indians were anxious for a Council not to treat on the business but to condole with Mr Chapin on the loss of his child who died last week we met them at 11 oClock and heard their condolence they agreed to meet in Council tomorrow at 11 oClock A M to open the treaty on the subject of the sale of the lands—When the hour came the Farmers Brother was absent and the meeting was postponed untill One when he arrived & the Council was opened by a Condolence with Mr Morris I am at a loss to know why the word condolence is used there seemed to be no misfortunes on the side of the Indians nor were any mentioned on the part of Mr Morris. this ceremony seems is intended to wipe away all the obstacles and clear the way to business: "we wipe away the tears from your eyes that you may see clearly we unstop your ears that you may here. and we clear your throats that you may speak easily:" several strings of wampum are delivered. After this ceremony I opened the Sunday 27 Wednesday 28

business. Brother [General] G. Shepard delivered his speech. Mr Morris then introduced the business. The Indians asked written copies but the jealousies among the chiefs were so great the Interpreters were afraid to deliver them to either and we laid them on the table red Jacket came and took them up they told us they would reflect on what we had said and meet us again no time was fixed for this meeting we bade them adieu. Abeel or Cornplanter the Farmers Brother Red Jacket, Little Billy, were the principal Chiefs present.

Tuesday 29 August

At three oClock P. M the Sachems sent us word they were ready to meet us in Councel we attended when the Farmers Brother made a short speech to the Indians which was not interpreted to us. Then Red Jacket spoke on the meeting of yesterday and said they were satisfied that all our Credentials were authentick and remained for us to say what more we had to say that there was yet something kept back, on explaining a few words we understood this to be the proposals for the purchase of the lands when red Jacket said as the day was far spent he was willing to meet tomorrow for the proposals the Councel was closed & we retired

Wednesday August 30

At three oClock P M the Indians met in Councel and we attended when *Mr Morris made them proposals to sell their land* except those small portions that were near their settlements and proposed to secure them a Handsome Capital

in the Funds or Bank to yield them an annual income sufficient to provide them with the comforts of Life. *stating to them that they would still have as much game on the ceded land as they now had and as an evidence of this he called their attention to the tract on which we are, purchased by Mr Phelps settled* [*by*] *white people yet yielding to the Indian huntsman more game than the tract asked for. NB on inquiry I find this to be true. the agr settlements are sparse yet so much wheat & corn is put in the ground that the Deer find food in greater plenty, the most industrious whites never hunt the poor & indolent are too lazy, and neither being used to it little game is destroyed by the whites*—Adjourned for the Indians to consider the subject the price is agreed on. Several artfull designing men are constantly among the Indians trying to persuade them to private bargains or by any means to divert their attention from the business their real object seems to be to be bought off—the law does not put it in our power to restrain these people it must be to y^{e} injury of the Indians, they are ready to aid in defrauding them if they can be well paid.

Since I last saw these Indians they are much less warlike more Lazy Idle & dissipated worse dressed in a word greatly debased by their more intimate connection with the whites. the certainty of a partial supply from the whites has lessened their exertions in Hunting and they practice more &

more our Vices. I am not able to learn their numbers as I am too lame to visit their Camps. it is easy to see they wish to have us consider them numerous & by scattering their camps in several places they have rendered it difficult to get at their true numbers their own acc^{t} makes them 1000 men women & children I do not estimate them at more than 600—they have no mogasins gloves or skins to sell are poor beggarly men

Monday Augst 31 This day spent by the Indians in consultations this afternoon they appeared to be getting drunk. nothing done this day. some disagreement among

Tuesday Sep^{r} 1 themselves. early this morning the white people complained that the Indians were plundering & very boisterous on enquiry found the whites had been selling them whiskey & cheating them. Red Jacket very drunk & Boisterous. The Farmers Brother & other chiefs sober and very angry at the conduct of Red Jacket. The Farmers Brother repaired to the house where the contention rose and stove the Barrel of Whiskey & let it all out. red Jacket kept drunk all day & many others of the Indians were drunk. towards night red Jacket was so far sober as to mount his horse and ride way where to get whiskey. I proposed to the Farmers Brother to stop the allowance of Whiskey he did not chuse to take it on himself but did not object to my doing it. I then desired Jones the Interpreter to proclaim publicly my order all the chiefs present approved it but Red Jacket. He insisted on having it I told him the order was

positive he must submit to it, he set out for the Tavern where he said he would have it. at bed time all is quiet

Wednesday 24 Set 9 oClo

This morning all the Indians I have seen are sober. at three oClock met them in Council Red Jacket almost sober but impudent—made a long speech in reply to Mr Morris proposal complained of the universal bad bargains the Indians had made with whites observed that the Oneidas had acquired money by their bargains for their land the national importance was lessened by it. that by the policy of the United States and New York in thus separating the Indians and giving distinct districts to the several tribes their great National Councils were weakened. he complained that the Treaty made with them by Mr Pickering was not fullfilled. that they were to be taught agriculture at any Expence. that on the contrary the Expence was now limitted and ended with saying that the Interpreters were bribed and that it was not impossible that I might be bribed by Mr Morris to urge them to this sale and it was not certain that I had authority to treat with them from the United States that Mr Phelps made the same pretensions and it appeared afterwards not to be true. I recapitulated part of my speech at the opening of the Treaty and assured the chiefs that R J knew better & that he in their name had already declared that he considered me as the Comm^{r} of the United States, he knew me personally as several of them did, & that he & they had already de-

clared their entire confidence in me & that I was the real representative of the President. that Mr Morris' wealth added to their land could not buy me and that the insinuation was improper and indecent but that I was sure not one of them believed or were mis . . . . . [means misled by] it. On this they all signified their entire confidence and R. J. replyed in a tone very different and hoped I would not be angry said that in Phelps treaty they had been decv[d] & He thot proper to mention it—as a caution. I answerd that he could not say any thing that would make me neglect my duty which was to see justice done them and to prevent any improper impressions being made on the Nation by misrepresentations (it was not safe to shew my Commission as they did not ask for it, because it contained my instructions which were unfavorable to Abeel request & his name mentioned in them. R J and Abeel are at great enmity and it requires much care to prevent their proceeding to Extremities. Abeel has not been admitted to their grand Council & at this Council sat back. red Jacket has abundantly evinced his depravity and insinuated in his speech to the agents of Mr Morris that he was not to be bribed he said in Council today perhaps *You have Your hands full of money to spend dont you open them.*[1] this was popular with the people but all the chiefs know he is ready for a Bribe. by this impudence he supports his popularity among all the subordinate classes and the chiefs dread his

[1] Underline in original manuscript.

secret Machinations Cornplanter & Billy calls him Coward—no whiskey has been issued to day the Indians are all sober and I have directed the usual allowance.

Sunday 3

The Indians are all sober this morning Corn Planter came to see me early informed me that he was about to retire, that he never saw the Indians behave so ill that he was no longer consulted that his influence was destroyed by the intrigues of red Jacket—I advised him to wait a day or two that the interest of his Nation was at stake. that he was a Soldier and should remember that so long as he was brave & honorable his Character would be good with the white people. he signified a desire to have me interfere & see if I could not reconcile their quarrel I waived this but resolved to effect it if possible. on inquiry I find it very doubtfull and sent him a message that it would require time & patience. at 4 oClock they sent for us and Red Jacket made a long speech the purport of which was that selling their Land would lessen their consequence tho it might increase their revenue that in every place where the Indians had retained small tracts of Land & suffered them selves to be surrounded by the white people they had become poor degraded people. he was today very decent.

for all the tract except small reserves.

Mr Morris made them an offer of 100.000 D[ollars] this evening the white People gave the Indians whiskey & told them 6 Townships ought to yield them as much as Mr Morris had offered. the Indians are treated by these people every

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night and all sorts of Lies and misrepresentations are uttered to them I do not know whether the Indians or these whites are the most profligate. I am persuaded a more decided conduct would close this treaty which is drawing out to an unreasonable length and the expence is enormous

Monday 4 7ber

Met in Council Cornplanter presented me three strings of Wampum with a speech complaining of the conduct of the Buffalow Creek Indians in not replying to his message to them, after his return from Philadelphia I availed myself of this to advise them to lay aside (at least during this Treaty) all private Animosity and Unite in a constant attention to the Interest they all had in this Treaty and to put it in my power by this means to guard their interests & promote their welfare without this unity among themselves it was not possible for me to be useful to them. the Farmers Brother, replied to Corn planter that it was wrong to bring their private disagreements into view that the white people never would have known there was any difference but for C P^{s} speech that indeed there was no difference among them. this speech was dictated by R J^{kt} as was easily seen by his repeated whispers to the F B^{r} I urged them to forbear any reproaches to lay aside all passion the Cornplanter might be wrong but that this difference ought to be known to me it was my duty to reconcile them and that their own interests made it necessary for them to be reconciled that the difference to be sure was trifling

and ought to be forgotten. that they were learning the vices of the white people who sometimes acted just as the indians now did and always when so acting injured the community &c they all promised to take my advice. I told them I had no private interests to promote that I never had asked them to sell their Land & never would Ask them to do so but I was tired of staying here and wished them to apply closely to the business we were met upon and for their own sakes as well as mine to bring it to a close that my ill health & my own private affairs made it necessary for me soon to commence my long journey home they thank[d] me & promised to be very attentive which they will forget as soon as they tast whiskey—Red Jacket made a speech to Mr Morris the same in substance as he had made before Mr Morris delivered them a written speech with proposals for the purchase of the Land they promised to return an answer soon red Jacket's influence is evidently on the decline this day the Indians did not meet as their excuse is a Squaw died. but it is evident they are influenced by the white people who tell them the offer is nothing that it is not a farthing an acre &c Tuesday 5 7br

This morning I fell in with Allen he was in company with Pouchu a Renegade Frenchman & one Ewen the latter is a Cultivator of Indian land a Vile fellow & is known to be constantly with the Indians to prevent the treaty they 7br Wednesday

seperated, Allen stayed with me and conversed a long time on various subjects but it was easy to learn he intended to defeat the Treaty if possible at Noon I met red Jacket he assured me that two days would finish the treaty satisfactorily to Mr Morris. that this afternoon a Council would be held when they would answer Mr Morris' proposals. I went home & found the Farmers Brother who wished a private Conversation I attend to him Parish the Interpreter. he said that he came to express to me his satisfaction at my conduct he wished me to continue my friendship to their Nation & as we were near closing the business he called to visit me &c all of which was nothing to y^{e} purpose he seemed tho'full & waited my reply—as he had not uttered a word of any consequence I did not reply When he began again & was pretty explicit in saying the Council would soon assemble & give a satisfactory answer to Mr Morris & desired me to be carefull of their interests. I replyed that I had done all in my power for them & sh^{d} continue to act as I had done & as he wished me but I had discovered that their confidence was placed in bad White Men and not in me that it was the more surprising to me that these men were most of them well known to the Indians and their characters were given me by y^{e} Indians, yet y^{e} Indians had taken to following their advice & not mine that it had been in vain that I had desired them to mind their own business & avoid these men. they were

constantly with them and had been pursuing their Councils. that unreasonable delay had been the consequence. he replied that it was his custom to have every body to visit there that asked him to do so. but their advice & councels went into one ear & came out of the other. We parted—before the Council met the white men attended me, & their associates expressed great satisfaction y^{t} the Indians were about to put an end to the Treaty without doing any thing. before we met I learned that they intend to offer 6 miles at the S^{o} End of the Tract its whole breadth. When we met the house was very thin and the Indians agitated. Little Beard a chief opened the Council by a speech to Corn Planter who had absented himself—he said in reply to Corn Planter's speech the other day they the Warriors had concluded to leave the whole of this business to the Sachems and returned the string of Wampum to Corn Planter's son Henry who rec^{d} it for his father. Then Red Jacket got up and opened the subject of the Sale and made some remarks on parts of Mr Morris's speech those which might mean something in Indian but translated meant nothing. he then said we have concluded to sell you 6 miles Square at the South end begining on Phelps East line runing 1° on our S^{o} Line & to make 6 miles sq^{e} at one dollar the acre. You need not ask us to take half a dollar. we have determined to try the value of our Land. Then Serf a chief made

a violent noisy & I believe impertinent speech to Mr Morris & presented him a string of Wampum the fellow was very drunk and the Inter[preter] did not [repeat?] his speech the Indians we[re generally [line illegible ms. torn] Mr Mor[ris
he could not [wou[ld not be accepted
a furious manner and & insolent said then we will [put out the?] Council fire we met hands we will shake hands & part hands he gave Morris & Williamson his hand rudely sat down & after a few moments we took our leave Corn Planter imediately visited me with his son Henry & desired a conference You see says [he] there is no doing anything with these people why is it that the United States do not apply to me. from the time we made peace with the U. S. I have been attended to apply to me and I can do something. Why do not you the Commissioner of the U. States apply to me—I replyed. My Commission does not authorise me to do so it is solely to hold a Treaty with the Seneca Nation for the purposes expressed in the Commission which you have heard. Your personal conduct to me has been very proper & I am satisfied with it but I can only treat you as an individual with the Seneca Nation only can I treat this time in came Red Jacket with Aaron son-in-law to Brant Aaron talks good English. Corn Planters son Henry was interpreting, Aaron aided him and when Corn Planter had taken leave said Henry was not capable of rendering in English what his

father said. Red Jacket probably came out of Jealousy having seen Corn Planter come to me & I believe as he considerately retired left Aaron to hear what his C. P business was. I find this evening the Chiefs in general reprobate the Conduct of R Jat and [ms. torn] wishes. they are assembling and revive the business tomorrow speech was rude and insolent. education has been ____ lewd ignorant & Vicious and a drunkard

early today the Indians shewed great desire to Thursday 7th 7br open the negotiations and we were informed that the Sachems had resigned the business into the hands of the Warriors & principle Woman We met the Council of Sachems & Women Red Jacket absent. Little Billy opened with a speech recapitulating the business of yesterday and apologizing for the harsh manner of R J and reprobating the rude speech of Serf and lamented that Mr Morris was so sudden in his answer insinuating that he should according to the Indian custom deliberated some time before he answered attributing their heat in part to his answer declining entirely their proposal, but proposed to bury in oblivion what had passed and enter seriously on a new negotiation Mr Morris made a soothing reply & the Council Fire was rekindled and is to burn with more brightness than ever. I congratulated the Sachems & Warriors on this rekindling reminded them of the advice I had before given them to attend industriously to the

business on which we [met?] and asked them to do me the favor to hasten the [time] of my departure. but cautioned them to take time enough to consider well the subject. Little Billy replied in a show of Politeness not before practised by any of the chiefs, then addressed him self to the Indians exhorting them to avoid intoxication and attend to the business—then covering the Council fire we departed Mr Morris answer yesterday was without p[assion] but firm & brought the indians to their senses but the white

miscreants that attend are industrious to distract the Indians & have the address to keep out of reach of the law of the U. S.

Fryday 8th 7br

Rainy the Warriors & chief Squaws attend in their several Councils to consult about selling their Land. no General Council. at supper found red Jacket by my side a little drunk but decent to me abused the Interpreter

Saturday 9 7br

Met in Council The Council opened by a speech from Little Billy to the Indians Then Corn Planter made a speech it was delivered in writing as follows

[see p. 82]

I answered: On any other occasion than the present I should deliberate a little before I answered but I can not delay a moment to reply to part of Your speech which misrepresents the President it is the more surprising as I gave you my first speech in Writ^g in which I expressly told you the Land was yours to keep or sell now [you] say we are sorry that the President has consented to our selling all our Lands if he had left the matter

to attend to ourselves it would have been more satisfactory He has left it entirely to yourselves I have never asked you to sell your Land nor has will he ever asked you to sell them they are Yours he secured to You by a Treaty which was lately laid on this table by Red Jacket and it was with you & well understood by you The U S do not ask you to sell your Lands nor do they wish to influence you to sell them You certainly know this and knowing it you are wrong to repeat that you are pressed to sell your Lands I now beg you to remember what I say to you that we may no longer grope in the Dark. I again repeat the Lands are yours. You know it, keep them or sell them as you please. there are several allusions in your speech to things that do not come within my Commission nor can they be considered at this treaty—*but in one word all the Promises on the part of the U. S. have been fullfilled & will as they have been be continued. all I have to do here is to see that in the present business justice is done* You—You talk of the pride of your Sachems and Mr Morris—I do not understand perfectly your meaning—but for these Gentlemen I will answer for them that they are ready to proceed to business. no pride or passion on their part has or will cause delay. I despair of persuading you to try dispatching the business & have determined to wait your time but I must re-

mind you that you inattention will be to your injury and puts it out of my power to be usefull to you. it is inexcusable that you should so misunderstand you know that the President has acted perfectly right in this business—and I beg you will no more pretend that you are not entirely at liberty to sell or keep your Lands. they replied that they now understood me & would proceed to finish the Treaty without delay. it is easy to discover that there is a great jealousy among [the] people they all want to sell the Lands b[ut] to find fault afterwards and would lay [blame on?] others. Corn Planter & red Jacket are I do not believe there is any Honesty among them they are a poor debauched abandoned race. Red Jacket is cuning but a brute.

Sunday 10 7br

I was indisposed General Shepard presided at the Council & informed my indisposition and told them that business might be carried on as if I was present on which Corn Planter informed Mr Morris that they had all agreed in an opinion to sell part of their Lands and would meet him by a Council tomorrow. Little Billy said a few words to the Nation that [is] the Warriors & the Women. Mr Morris in answer to this speech proposed to them to meet him by a Committee from the heads of all their villages to point out the reservations which tomorrow afternoon should be laid before the Great Council to compleat the bargain

no business done but several meetings among the Indians & conferences with Mr Morris to one of which I was called Corn Planter wanted me to advise them to sell. I told him he knew my business & the extent of my power I left them marking out the reserves. I do not believe they are in earnest, unless each Sachem & chief can be ——— this day a drunken Indian was bitten by a Rattlesnake they made him drink something which sickened him till he discharged blood then y^e^ white Doctor bled him on both arms. they tied the Snake Skin round the bitten part—the Young King arrived. Monday 11 7^br^

The Indian bit yesterday dead. Whether the Rum, the Snake, the bleeding or the other applications caused his death is uncertain no business to day we met to condole with them on the death of this & one or two other Indians a long unmeaning talk Mr Morris desired them now their minds were [at] ease to attend to business. I am p[ersuad]ed we must act with more decision if we ever finish this Treaty: the season is sickly all the people near the flats are sick & the complaint begins to get up the Hill. this evening Corn Planter has some new project and y^e^ Treaty seems at a stand 12 Tuesday 7^br^

The Young King lately arrived delays the business and this evening when it seemed as if we were on the Point of closing the Treaty, all is afloat this Young King & two squaws are opposed & all is at a stand. 13 Wednesday 7^br^

Thursday 14th This day the chiefs in Council all day among them selves. at evening called on Mr Morris were one hour in consultation said they would declare their final resolution in the morning—

Friday 15 The Indians yet wavering afternoon called on Mr Morris and seemd determined but red Jacket interposed and put all afloat.

Saturday 16 7br early this morning Corn Planter called on me to read his speeches to G W & Mr A last Febʸ and asked me to cause a mile square of Land which was given him by General Parsons [?] & the deed stolen by the white people to be signed him here I made him a direct answer that it was out of my power but advisd him to confine his reᵗˢ to the only business I could attend to—promised to report his request to the President this afternoon Mr Morris agreed to give them 1000 dollars & they met in full Council and opened by a speech from Corn Planter as follows [p. 76]

Red Jacket X [p. 81]

the deed was now read & explayned deliberately after this the Farmers Brother spoke as follows [p. 77] Red Jacket having been out returned with Allens half Blood Daughter and proposed to ask Mr. Morris some questions, the Girl then asked Mr. Morris if he had bought the Land called Mount Morris of her father he answered Yes she replied no you havnt how much did you pay him £1000—she said I forbid the Commissioners to sign away my land. I told her she could not interupt the Treaty no rights of hers

would be lessened by the Commissioners. red Jacket then proposed to omit signing untill tomorrow. I told them it was our Sabbath that they all understood the business that I was tired of such delay & trifling—if they wanted time to consider further to say so—but otherwise I wished to finish the business red Jacket said they wanted to have their games to play Ball &c untill Monday—He was by this time a little drunk. The Farmers Brother Corn Planter & Little Billy and other with great decency prevailed—red Jacket having retired with Allens daughter—and all signd but red Jacket I covered the Council fire and told them I would meet them at ten oClock tomorrow to reply to their speeches & took my leave.

Sunday 17th

Corn Planter & Little Billy came to desire me to stay another day I told them I could not they had something to say. I waited till 12 oClock we met in Council

Cornplanter, in behalf of the warriors

You the Sachems have had the business on hand some time–You determine to keep our country but you referred the business to the warriors & women–We have agreed to sell our Lands–You say that you wished that our reserves might be joined–let us brothers join our minds–What we have done we hope is for the good of us and our children–We hope it is agreeable to the Great Spirit–It is according to the advice of General Washington–He advised us to

sell for an annuity–which would render our old women and children comfortable & happy.– There are speeches from General Washington containing that advice, and we are all satisfied, sachems, chiefs and warriors.–

Farmers Brothers speech after the deed was read & explained.–

Brother

What you have said to us, we have been thinking of a number of days. You have spoken our own words. Make you mind perfectly easy. We all understand it,–every warrior present– and are all perfectly satisfied.

Corn Planters Speech to the Comiss of the U. S.

We Yesterday compleated the bargain for which this Council fire was kindled and pointed out our reserves, but night coming on could not say what our minds wished to express, but shall now. We consider the bargain closed by our Sachems chiefs Warriors and Women with which we are all satisfied we hope the President will attend to it and see the money planted in the Bank, and that the Comiss^{r} at W– will see to it, and that Justice is done us. he has promised to hold the Treaty we have signed I hope that the amount of the purchase will continue forever for the benefit of our posterity untill the Sun shines no more, which you told us would be the case– I thank the Great Spirit that the President of the U. S. remembered us when we were poor you gave the Nation $4500

in cloathes we wish that sum to be added to the Annuity that will now [come?] out of this sale and that it may be paid in Cash.– because dis[tressed?] for blankets, one is only given to three people, which often causes disputes who shall have it, whereas if money was paid we can divide with care & purchase ourselves, we hope you will so arrange matters as to have it paid in money.–We wish the annuity from Mr Phelps added to the other payments to be made in money to have the principal vested in government funds. Mr Phelps may die, and we may Loose it.– We have been told how comfortable the white people are by husbandry We could make ourselves happy also if all our payment was in money instead of goods. We expect the President will have the annuity of this purchase sent forward and delivered to Cap. Chapin of Canandaigua, and that no deduction for sending it will be taken from us, as you represent the President we beg your influence to effect this We wish all our annuities to come in money and at one time a few of the Nation then could come forward to receive it, whereas if it was in Cloathing great part of Nation will come, which is attended with great Inconvenience such as have happened at this Treaty (several Indians died

FARMERS BROTHER SPEECH TO THE COMISS OF THE U. S. & THE NATION

We have sold our Lands We expect next summer surveyors will survey the Lands, we hope the

president of the United States will send a surveyor that we can confide in, that we may not be cheated,—we request that the Interpreter also (Mr. Parish is appointed by the U. States) may come with the Surveyors in order to have errors Explained the Nation will send one of their people with the Surveyors, ~~this~~ [to?] their respective reservations—We expect all the Surveys to be made without any Expence to our Nation—Brother we have been refused the privilege of hunting and fishing & cutting wood on the Lands sold Phelps, We Expect to enjoy this privilegde in the sale made Mr Morris and to have our rights restored on that sold Phelps as the Country get[s] settled to be allowed to trade as before in the sale of our furs, and not to permit the white people to take them at their own price.—We promise you that the bargain now made wil' be strictly attended to on our part and hope it will be the case with the white people We wish to Live in friendship and to keep bright the chain of friendship by a strict adherance to the treaty we hope the Superintendent Cap Chapin will take care to make the white people friendly to us.—We request a friendly intercourse and correspondence upon every subject that Interests us. We hope the U. S. will communicate to us every thing that is for our & their good we will open our ears to it.

COLL. WADSWORTH SPEECH TO THE SENECA NATION

Brothers I was so unwell last evening that I could not reply to your speeches. I am gratified to find you all satisfied with the bargain made for your Lands, and that you well understand it.—I wish you and your posterity happy with the proceeds of the sales.—I shall report to the President what you have said and see the purchase secured before the deed was given up.—I am particularly pleased to find you are all United and happy; if I have contributed to Unite you I will not regret any trouble or fatigue if you continue to be United.—*the tenor of the sale obliged Mr Morris to pay the 100m dolls to the Bank of the U. S. it will produce every year a sum without lessening the principal and it is secured [in] the same manner as the white peoples that is the President Congress nor no man could take it from them, and that as long as the U. S. Exists the money is secure to you.—Hunting & fishing is secured to you on the tract just sold to them in the deed you have given.* I do not know the Contract made with Mr Phelps, but will report to the President what your wishes are he would see justice done you, Brothers, you complain of wrongs in general terms, when any wrong is done you complain directly, name the persons who do the wrong to Ct Chapin He will report it to the President who will right you

I have no power to assure you that the President will pay the Annuity of $4500 dollrs in specie

Instead of cloathing, but presume it will make no difference he will consult your welfare in this respect & study your interest ~~recommended to you more attentive to the white people among you most of them have bad characters, and mislead you~~ The U. S. have passed a Law to prevent encroachments on your possessions, which Law is with Cap^{t} Chapin and that it had been twice altered by Congress to accomodate you report to the Superintendent all Evils that arise that they might be presented to congress to remedy if proper.—Avoid any connection with white People of bad Character—pay no attention to any men that come among them. but such as are recommended by the Superintendent they mention their situation not as good as the white people Why then do they settle amongst you, to force themselves upon you, beware of them. I mean bad designing men and only [let] them settle by you agreeable to Law.—*Advises some of thr Head people to set an Example for Agriculture to begin with a Little Cultivation, when they would grow as happy as the white people, and flourish like them and Live in friendship together—did not wish them to give up their old Customs—repeated his sincerity for the Nation, and thanked them for their attention and kind-

* This speech of Commissioner Wadsworth, was originally written out and phrased in the third person. Later, apparently by Wadsworth, it was changed to the first person, except in the following sentences.

ness to him, was pleased at the thoughtfullness and attention of the nation, on the important business, and happy that the wicked designs of the bad white people was frustrated on this occasion by their good judgment in not yielding to bad advice, and that the treaty secured to them more than was ever before given—Concluded with wishing them Happiness and a fulfillment of his promises gave the Head Sachems [&] Warriors his hand and parted—

RED JACKET

You are as you say You are Comm^{r} of the United States we are glad of it We have agreed to sell our Land I am one who has agreed to the bargain don't you blame us when you see what we have done we now all join in one opinion all has been done openly nothing has been hiden the President who sent you is benevolent he loves us he sent you here to see that we did no wrong. I had rather our reserves had been [larger?]. to Gen Shepard You will observe I had agreed to all the business of the Warriors I have not been troublesom but have attend to Warriors [business] seriously & quietly Brother this business is wholly refered to our W^{r} Chiefs & Women You will see presently what is done I w^{d} have wished to have our reserves larger. make your mind easy I will submit let your mind be perfectly easy I hope you will be perfectly easy the Chiefs &

Warriors & Women are easy so am I—I name not the great Spirit on this occasion because it is not proper to do so. he may disgrace our Camp [?] I submit my mind is easy

Corn Planter to his Brother the Commissioner & other Gentlemen attending. We have kindled this Council fire at the request of Mr Morris we have heard what has taken place in Your conversations with our Sachems, day after day. our Sachems covered the Council fire, but Mr Morris told us it was not entirely covered, that he meant to lay the business before the Wa[riors] & Head Women. And now as the business is referd to [the Warriors & Women I will now remind you of a few [promises?] made us by the U S at the close of the War, their Commissioners told at that time they had got strong & that if we would listen to the Voice of Peace, they would take us under their Protection—further they told us that if they would comply with this request that they would make our Seats firm & permanent to us even if they were surrounded by White people individuals should be undisturbed they also told us at that time & ever since, that if we would only set our selves to make peace with the Hostile Indians toward the Seting of the Sun that they should always keep us in remembrance, as for my Part, since the conclusion of the War I have always exerted my self to preserve peace & have Allways

told my People, that we would look up to General Washington as our father as he was the Governor of the 13 fires. We have always acepted his advice & are happy to find that You have grown a great People & are now 15 fires—[The] U S has always told us that the little land marked out to us, will be very Valuable to us & our Childrens Children if we would listen to the Voice of Peace Now we Warriors are going to see what this Value is, by this Council fire lighted up here. One thing we are sorry to find that the President has consented to the Sale of all our Land at this Council fire. if he had left the matter to ourselves it would have been more satisfactory as we wish to act as we please in the business, under this situation we hope that the President Mr Chapin & all the Gentlemen will take interested pitty on us, as there are many of our Brethren of other Nations residing by our consent on these lands and that in every town there is the bones of our Ancestors which makes us very stingy of our Lands but if You all will consent to leave the matter entirely to us, we will then conclude a bargain with Mr Morris. We Warriors are very much dissatisfied with the pride & ambition of our Sachems. it appears to us that Mr Morris in conseq[uence] is also geting proud & obstinate: but now as the [business?] is refered to the Warriors & Women we hope he will lay all obstinacy & pride aside. Now we ask Mr Morris will only consent to leave

the matter intirely to us to [find?] out the advantages of this Bargain We hope Mr Morris will [take] this matter into his serious consideration & consult the Book of the great Spirit & that if he can find any thing therein that directs imposing on Indians then we will submit to it In examining this Book if he should find any thing directing white People to Intrude on Indians we wish he would tell us of it

B TREE *Sep 9, 1791*

[Fragment.]

the one mile along the Niagara River and the Island in Lake Erie are not mentioned in the Reservations but they remain the property of the Indians as the Deed is so worded as not to extend the property conveyed as far as the Mile or the Island

APPENDIX C.

DISTRICT COURT OF THE UNITED STATES,
Western District of New York.

UNITED STATES OF AMERICA EX REL. JOHN D. LYNN
against
FREDERICK W. HAMILTON ET AL.

On petition and writ of habeas corpus.

HAZEL, J.

The petition recites the arrest and imprisonment of Wilford Kennedy and Nelson Hare, tribal Indians of the Seneca Nation living on the Cattaraugus Reservation, for violation of the conservation law of the State of New York, in that on April 21, 1915, they were fishing with a net in Cattaraugus Creek within the boundaries of the Cattaraugus Indian Reservation, in violation of section 176 of said law. The Indians were arrested by State game protectors and arraigned before Judge William Brennan at Buffalo, whereupon a writ of habeas corpus was granted at the instance of the United States attorney to test the legality of the arrest and imprisonment.

The case was ably argued before me at the Rochester term of court by A. F. Jenks, Esq., deputy attorney general, appearing for the State of New York, and by George P. Decker, Esq., appearing as counsel for the United States, and time for filing briefs was allowed. The deputy attorney general maintained that the State of New York had jurisdiction over tribal Indians for violations of the conservation law on their reservations, but recently I have received from him an admirable opinion, based on an examination by him of the authorities bearing upon the disputed question of jurisdiction, in which he reaches the conclusion that the position of the United States Government was right and that the New York State conservation law does not apply to tribal Indians living on reservations within the territorial limits of the State. I adopt such opinion, which is filed herewith, and concur in the conclusions therein reached. An order may be entered allowing the writ and discharging the defendants.

JOHN R. HAZEL, *D. J.*

NOVEMBER 3, 1915.

UNITED STATES DISTRICT COURT,
Western District of New York.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
FREDERICK W. HAMILTON, LEON W. PAXON, and Albert Stedlmeir, defendants.

The petition of the plaintiff herein having been received and the writ of habeas corpus of April 22, 1915, directed to the defendants commanding them to produce the bodies of the prisoners, Wilford Kennedy and Nelson Hare, having been allowed and due service thereof made and the prisoners produced before this court at Buffalo on the same day, and the matter having been adjourned to May 11, 1915, at the courthouse in Rochester, when the prisoners appeared, the plaintiff appearing by George P. Decker, of counsel, and the defendants appearing by Herbert B. Lee and A. F. Jenks, deputy attorney general of the State of New York, of counsel, the deputy attorney general appearing also for the State of New York, and the defendants having made their return, dated April 30, 1915, to said writ, and this court having then and there made a summary inquiry into the case, and it appearing therefrom on examination of the prisoners in open court and otherwise that the place where the prisoners were engaged in fishing at the time when they were seized by the defendants was within the limits and bounds of the Cattaraugus Residence Reservation of the Seneca In-

dians and that the prisoners at said time were members of the Seneca Tribe or Nation and actual residents as well of said reservation, and this court having found and decided as matter of fact accordingly after hearing counsel orally and after adjournment of the cause for the filing of briefs heretofore duly filed, together with an opinion of the attorney general of said State, filed herewith, from which it appears that said attorney general concedes that the conservation law of the State of New York does not apply to tribal Indians living on their residence reservation, and this court after due consideration having decided that said conservation law does not apply to tribal Indians in such cases by decision filed November 3, instant, directing that an order be entered discharging said prisoners, accordingly, now, therefore, it is

Ordered, On motion of Stephen T. Lockwood, attorney for the United States, that the prisoners, Wilford Kennedy and Nelson Hare, be, and they are hereby, discharged from the custody of and imprisonment by the said defendants, officials of the said State of New York and acting under color of its authority, and the said prisoners are so discharged on the ground that the said State has no jurisdiction on or over the said Cattaraugus Residence Reservation and had no jurisdiction over the said prisoners while residing or being thereon.

JOHN R. HAZEL, *D. J.*

NOV. 30, 1915.

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Supreme Court of the United States

October Term, 1915.

No. 666.

THE PEOPLE OF THE STATE OF NEW YORK EX REL. WALTER S. KENNEDY,

Plaintiff in error,

vs.

FREDERICK W. BECKER, as Sheriff of Erie County, New York,

Defendant in error.

BRIEF ON BEHALF OF DEFENDANT IN ERROR

E. E. WOODBURY,
Attorney-General of the State of New York,
Capitol,
Albany, N. Y.

A. FRANK JENKS,
BLAINE F. STURGIS, *of Counsel.*

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Supreme Court of the United States

The People of the State of New York on the Relation of WALTER S. KENNEDY, *Plaintiff in Error,* *against* FREDREICK W. BECKER, as Sheriff of Erie County, New York, *Defendant in Error.*	October term, 1915, No. 666.

BRIEF OF THE ATTORNEY-GENERAL OF THE STATE OF NEW YORK ON BEHALF OF THE DEFENDANT IN ERROR

Concise statement of the case

This cause comes to this court by a writ of error, dated the 5th day of October, 1915, allowed at the instance of the relator, to review an order made herein by the Court of Appeals of the State of New York, (215 N. Y. 42). The said order affirmed a final order of the Appellate Division of the Supreme Court, Fourth Department, entered on the 6th day of January, 1915, which reversed an order of the Special Term of Erie County, (Hon. Charles A. Pooley, Justice Presiding) entered on the 2nd day of June, 1914, discharging from the custody of the Sheriff of Erie County, Fayette Kennedy, Warren Kennedy, and Willis White, Jr., three Indians, who were brought before the Special Term on a writ of Habeas Corpus.

FACTS

The three Indians before named, members of the Seneca Nation and residing upon the present Cattaraugus Reservation, were taken into custody by duly authorized game protectors employed by the Conservation Commission of the State of New York. They were charged with violating Section 176 of the Conservation Law of the State of New York, in that on the 31st day of May, 1914, they were caught spearing fish in Eighteen-Mile Creek in the town of Evans, county of Erie, State of New York, and had in their possession two black bass, two bullheads, one catfish, two carp and nine suckers and mullet. They were arraigned on May 31, 1914, before Frank D. Booth, a Justice of the Peace in the town of Tonawanda, in said county and state; an adjournment was granted in order that they might procure counsel and bail; and, in default of the latter, were committed to the Erie county jail. (Transcript of record, pages 2-8.) The alleged offense and the arrest took place at a point without the limits of the Cattaraugus Reservation. (Id. page 14.)

Sections of State Conservation Law Involved

Part III, Section 176, says:

> "§ 176. **Taking, limit, possession, sale and transportation of fish and game restricted.** No person shall at any time of the year, pursue, take, wound or kill, in any manner, number or quantity, any fish, quadrupeds or birds protected by law, or buy, sell, offer or expose the same, or any part thereof, for sale, transport, or have the same in possession ex-

cept as permitted by this article. Nets except in the marine district, tip-ups, set and trap lines, spears, grappling hooks, naked hooks, snatch hooks, eel weirs and eel-pots shall not be used to take fish except as specifically permitted in this article. Any person aiding in any manner in such prohibited acts shall be deemed to have violated this section."

Part III, Section 177, says:

"The game protected by law * * * shall only be taken * * * with a gun fired at arm's length without rest * * *. Fish * * * shall only be taken by angling * * *.

Part III, Section 182, says:

"A person who violates any of the provisions of Part 3 * * * is guilty of a misdemeanor * * * and liable as follows: To a penalty of $60 and to an additional penalty of $25 for each fish, bird or quadruped * * * taken * * * in violation thereof."

Part VIII, Section 270, says:

"Unless otherwise provided by this article, seines, gills, fykes, pounds, traps, scaps and other nets or devices may be set or used in any of the waters of the state provided a license so to do shall be first obtained from the commission. * * *"

(No permission is given anywhere to use spears.)

Discussion

The *locus in quo* is upon lands formerly owned by the Seneca Nation of Indians. By the Hartford Convention of 1786, the dispute which had arisen between the legislatures of the States of New York and Massachusetts as to the title to the lands in

question was amicably settled by a cession from Massachusetts to New York of the sovereignty and jurisdiction of the tract, and by a cession from New York to Massachusetts of the right of preemption of the soil from the Indians.

On May 11, 1791, the Commonwealth of Massachusetts conveyed to Robert Morris, " his heirs and assigns forever the *preëmption right* and all other right, title and interest which the commonwealth hath to " said lands. On September 15, 1797, Robert Morris, under the sanction of the United States of America, entered into a contract with the Sachems, Chiefs and Warriors of the Seneca Nation for the extinguishment of the Indian title to certain lands described therein. In this agreement the Seneca Nation reserved certain lands and further provided, "Also, excepting and reserving to them, the said parties of the first part and their heirs, the privileges of fishing and hunting on the said tract of land hereby intended to be conveyed."
(Little & Brown's Ed. U. S. Statutes at large, Vol. 7, p. 601–2.)

The questions presented by this appeal are:

First. Whether the fishing and hunting privileges, reserved to the Seneca Nation by said Treaty, constitute an absolute and independent right, so that the same may be enjoyed free from any control or regulation by the State of New York in the exercise of its police power; or whether on the other hand, it is a right which said Seneca Nation of Indians and all the members thereof may freely enjoy in common with the citizens of the State of New York, but subject to such restrictions and limitations in the exercise thereof, as the State in its sovereign capacity and

in the exercise of its police power may deem necessary for the public interest.

Second. Whether members of the Seneca Nation of Indians, arrested while engaged in the act of spearing fish at a point on Eighteen-Mile Creek, some distance from their reservation, could lawfully be arrested and brought to trial in the courts of the State of New York for a violation of the statute above referred to; or whether on the other hand, being members of the Seneca Nation, they were free to defy the penal laws of the State of New York with respect to hunting and fishing.

ARGUMENT

POINT I

NEW YORK STATE HAS JURISDICTION TO PUNISH TRIBAL INDIANS FOR A VIOLATION OF ITS LAWS, ENACTED IN THE EXERCISE OF ITS POLICE POWER, WHEN SUCH VIOLATIONS OCCUR OUTSIDE THE LIMITS OF THEIR RESERVATION

When Indians leave their reservations and cross into territory over which the State has governmental jurisdiction, they forfeit the protection accorded them as wards of the Federal government and subject themselves to the laws of the State, the same as other individuals.

This doctrine is supported by this Court in the following cases:

Clairmont v. *United States,* 225 U. S. 551.

Ward v. *Race Horse,* 163 U. S. 504.

Ex parte Tilden, 218 Fed. Rep. 920.

The case of *Ward* v. *Race Horse* (*supra*) is very similar to the case at bar. In that case the plaintiff in error was a member of the Bannock tribe of Indians and resided with that tribe on the Fort Hall Indian Reservation. He was taken in custody by the sheriff for violating the game laws of the State of Wyoming, at a place within the State about one hundred miles distant from the Fort Hall Indian Reservation. He sued out a writ of Habeas Corpus on the ground that his detention was in violation of the Constitution and laws of the United States, and in disregard of a right arising from and guaranteed by a treaty made by the United States with the Bannock Indians. His discharge was ordered by the Circuit Court. On an appeal to this Court the order was reversed and the defendant was remanded to the custody of the sheriff. This Court held, that the provision in the treaty with the Bannock Indians, " that they shall have the right to hunt upon the unoccupied lands of the United States so long as game may be found thereon ", etc., did not give the said Bannock Indians the right to exercise this privilege within the limits of the State of Wyoming in violation of its laws, as the subsequent act of Congress admitting Wyoming into the Union as a state, superseded the treaty to that extent.

POINT II

THE RESERVATION OF THE PRIVILEGE TO FISH AND HUNT ON THE LANDS CEDED TO ROBERT MORRIS BY THE TREATY OF "BIG TREE" DOES NOT PREVENT THE PROSECUTION OF INDIANS VIOLATING THE CONSERVATION LAW ON THE LANDS COVERED BY SUCH RESERVATION

The Hartford Convention

The Hartford Convention was held in accordance with the Articles of Federation and no subsequent ratification by Congress was necessary to give it validity.

The plaintiff in error in an extensive argument questions the validity of the Hartford Convention on the ground that the same has never been ratified at the hands of Congress.

The defendant in error in reply to this argument submits to this Court that the Hartford Convention was conducted in accordance with the provisions of the Articles of Confederation and became a valid and subsisting compact without ratification by Congress.

The provision of the Articles of Confederation respecting disputes between two or more states is Article IX. It provides:

> "* * * The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more states concerning boundary, jurisdiction or any other cause whatever; which

authority shall always be exercised in the manner following: Whenever the legislative or executive authority, or lawful agent of any state in controversy, with another shall present a petition to congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of congress to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties, by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as congress shall direct, shall, in the presence of congress, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges, who shall hear the cause, shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which congress shall judge sufficient, or being present shall refuse to strike, the congress shall proceed to nominate three persons out of each state, and the secretary of congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear, or defend their claim or cause, the court shall nevertheless proceed to

pronounce sentence or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings, being in either case transmitted to congress, and lodged among the acts of congress for the security of the parties concerned; provided, that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the state, where the cause shall be tried, ' well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward '; provided also that no state shall be deprived of territory for the benefit of the United States.

"All controversies concerning the private right of soil, claimed under different grants of two or more states, whose jurisdiction as they may respect such lands and the states which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states."

By Chapter IV of the Laws of New York State, passed the 12th day of November, 1784, an act was passed entitled, "An Act to appoint agents or Commissioners for vindicating the right and jurisdiction of this State against the claims of the Commonwealth of Massachusetts pursuant to the Articles of Confederation and Perpetual Union of the United States."

The act first sets out the Act of Congress showing that the Legislature of the Commonwealth of

Massachusetts had presented a petition to Congress relating to certain grants of land over which there were conflicting claims and appointing a day for the appearance of the States of New York and Massachusetts by their lawful agents at the place in which Congress shall sit, as by the said Articles of Confederation and Perpetual Union is directed. The act then proceeds to appoint Commissioners to represent the State of New York to meet with the Commissioners from Massachusetts and proceed to adjust the claims in accordance with said Articles of Confederation.

This dispute was compromised by the Commissioners on the part of each state, four from Massachusetts and five from New York, at Hartford, Connecticut, on December 16, 1786.

Article IX of the Confederation provided for the settlement of disputes between the states, without any action or ratification by Congress in case they could agree, but in case they could *not* agree the Articles provided for a Federal Court, to be selected in the manner therein prescribed, whose judgment was to be final and conclusive.

The Hartford Convention, being a valid compact, and the treaty of " Big Tree " having been duly ratified by the Congress, the vital question in this cause is the interpretation of the reservation contained in such treaty. The reservation was couched in the following general language:

> "Also, excepting and reserving to them, said parties of the first part (The Seneca Nation) and their heirs the privilege of fishing and hunting on the said tract of land hereby intended to be conveyed."

It is contended by the plaintiff in error that he is not subject to the conservation laws regulating

and controlling the right to fish and hunt in the State of New York, by reason of the fact that the Seneca Nation, when it sold its lands to Robert Morris, reserved to said Nation and its members, the right to fish and hunt on the lands ceded.

Does this reservation give to said Seneca Nation the right to fish and hunt on the lands covered by said treaty uncontrolled by the state in the exercise of its police power?

The Attorney-General, on behalf of the defendant in error, maintains that this reservation was not intended by any of the parties to the treaty in which it was incorporated, to deprive the State of New York of governmental jurisdiction over the territory which it covered.

Nothing in the text of the treaty gives color to the suggestion that the Seneca Nation reserved an absolute right to fish and hunt on the ceded lands *at will* and *in any manner* regardless of the conditions that might exist in the future.

It would seem that the parties only contemplated that in so far as Morris, his heirs and grantees, were concerned, the right of the Seneca Nation and its members to fish and hunt on the lands covered by the treaty should not be interfered with; for if, as contended by the plaintiff in error, the treaty was intended to bind the State of New York so that it could not regulate and control fishing and hunting by the Seneca Nation on these lands, it was void to the extent that it sought to limit the governmental control which the State of New York had as the sovereign owner of the ultimate fee.

> " The governmental power of self protection cannot be contracted away, nor can the exercise of rights granted, nor the use of

property, be withdrawn from the implied liability to governmental regulation in particulars essential to the preservation of the community from injury."

N. Y. & N. E. R. R. Co. v. *Bristol*, 151 U. S. 556, 567.

Chief Justice Shaw in his opinion in *Commonwealth* v. *Alger*, 7 Cush. 53, 84, admirably states the extent and limitations upon their power:

"We think it a settled principle, growing out of the nature of well ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that its use may be so regulated, that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. All property in this commonwealth, as well that in the interior as that bordering on tide waters, is derived directly or indirectly from the government, and held subject to those general regulations, which are necessary to the common good and general welfare. Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment, as shall prevent them from being injurious, and to such reasonable restraints and regulations established by law as the legislature, under the governing and controlling power vested in them by the Constitution, may think necessary and expedient."

It would seem to be well established by the decisions of this Court that the ultimate fee of all lands occupied by Indians is in the sovereign,

subject to the right of occupation until the same is extinguished under sanction of the Government.

Fletcher v. *Peck*, 6 Cranch 87.
Johnson v. *M'Intosh*, 8 Wheat. 543.
United States v. *Kagama*, 118 U. S. 375.

The preëmptive right which Massachusetts sold and conveyed to Robert Morris was simply the right to extinguish the Indian title by purchase. He had no power or authority, even with the consent of the Federal Government, to barter away the governmental control which New York had, as sovereign owner of the ultimate fee.

The policy of the Federal government in permitting the extinguishment of Indian titles was to confine Indian tribes to limited territory and to secure to white settlers land for their future homes, to which the sovereign powers of government would attach for their protection and safety. A partial extinguishment of the Indian title would prevent complete governmental sovereignty over the land purchased and would defeat the prime objects of the grant.

The treaty making power was never intended to abridge the right of a state to regulate its strictly internal affairs.

> " The treaty power as expressed in the constitution is in terms unlimited, except by those restraints which are found in that instrument against the action of the government, or its departments, and those arising from the nature of the government itself, and that of the states. It would not be contended that it extends so far as to authorize what the constitution forbids, or a change in the character of the government or in that of one of

the states, or a cession of any portion of the latter without its consent."

Geofroy v. *Riggs*, 133 U. S. 258.
Tucker's Constitutional Limitations on Treaty Making Power (1915) pages 381–2.

In construing provisions of a treaty, this Court has always upheld the police power of the states, where possible.

Ward v. *Race Horse*, 163 U. S. 504.
Patsone v. *Pennsylvania*, 232 U. S. 138.
Compagnie Francaise de Navigation à Vapeur v. *State Board of Health*, 186 U. S. 380, 394–395.

The Attorney-General contends that the reservation in question, reserves to the Seneca Indians the privilege of hunting and fishing in common with the citizens of the State, and subject to regulations enacted by the State in the exercise of its police power. Such a construction does not work any injustice to the Indians. The conservation laws were enacted for the preservation of a valuable food supply. Proper regulation of these natural resources has proven beneficial to the citizens of the State and, if applied to Indians would be equally beneficial to them.

The New York Indians of today are an agricultural people, gaining their livelihood mostly from the soil supplemented by the assistance given them by the Federal and State governments. While it is true that the Indian tribes are still wards of the general government, and must be cared for as equity and humanity demand, due

regard must also be had to the needs of the greater public of which they form a part.

CONCLUSION

IT IS, THEREFORE, RESPECTFULLY SUBMITTED THAT THE JUDGMENT OF THE COURT OF APPEALS OF THE STATE OF NEW YORK, BROUGHT UP BY THE WRIT OF ERROR HEREIN, SHOULD BE AFFIRMED, WITH COSTS

Respectfully submitted,

E. E. WOODBURY,
Attorney-General, State of New York, Capitol, Albany, N. Y.

A. FRANK JENKS,
BLAINE F. STURGIS, *of Counsel.*